

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-3091
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Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

GIL 10-001 amended

December 29, 2010

XXXXXXXXXXXXXX
Attn: XXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Re: General Information Letter

Dear XXXXXXXXXX,

You submitted a request for information regarding the application of the daily rental fee. On July 12, 2010, we issued a general information letter on the issue. Although we endeavor to provide the best possible advice on tax questions, we reserve the right to revise the advice if we believe that it is incorrect. Advice provided in general information letters is advisory only and is not binding on the department. Having recently had an opportunity to review this issue, we believe that the guidance we provided should be revised as set forth below. For more information about general information letters and private letter rulings, see regulation 24-35-103.5 which can be viewed on our web site at <http://www.colorado.gov/revenue/tax> and select FYI > Publications > Rulings.

Issue

1. Is the maximum daily rental fee calculated using 44 days or 45 days?
2. If a motor vehicle is rented for more than 44 days, including renewals, is a fee imposed on the first 44 days (\$88.00) or is the rental completely exempt from such fee?

Conclusion

1. The daily rental fee for retailers, whose primary business is the rental of motor vehicles for less than 45 days, is the number of days the motor vehicle is rented, including renewals, and is not limited to 45 days. There is no daily rental fee for retailers whose primary business is the rental of motor vehicles for more than 44 days, even if the retailer occasionally rents motor vehicles for less than 45 days.

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DENVER, COLORADO 80203

2. If the retailer's primary business is the rental of motor vehicles for less than 45 days, then the daily rental fee is charged on the number of days of rental, even if the total number of rental days exceed 44 days.

Background

Your company is in the business of renting motor vehicles for recreational purposes. Some rental agreements are for a period of less than 45 days, but some are for a period greater than 44 days, including renewals.

Discussion

Colorado imposes a daily rental fee of \$2.00/day for motor vehicles rented in Colorado. Specifically, subsection 43-4-804(1)(b)(I), C.R.S., provides,

b) (I) Except as otherwise provided in subparagraph (III) of this paragraph (b), a daily vehicle rental fee, which shall be imposed on the rental of any vehicle rented in the state at the rate of two dollars per day. Any person who owns vehicles that are based in Colorado for rental purposes or who owns vehicles that are based in a state other than Colorado for rental purposes but rents such vehicles from a business location in Colorado and whose primary business is the rental of such vehicles for periods of less than forty-five days, including renewals, to another person shall collect the daily vehicle rental fee from the renter of each vehicle rented. The rental invoice shall list the daily vehicle rental fee separately as a Colorado road safety program fee.

The statute is not a model of clarity. One interpretation is that the fee is imposed on the first 44 days of rental. This interpretation is similar to the administration of the state's lodging tax, which is a sales tax imposed on lodging for less than 30 consecutive days. See, §39-26-704(3), C.R.S. Under the lodging statute, the entire rental is exempt from tax, including the first 29 days, if the contract for lodging is for 30 days or more. Our initial advice regarding the motor vehicle daily rental fee was modeled on this lodging tax.

An alternative interpretation is that the fee is imposed on retailers engaged in a specific type of business rather than the number of days that the vehicle is rented. That is, the daily rental fee is imposed on retailers whose primary business is renting motor vehicles for less than 45 days. The relevant language of the statute is,

Any person ... whose primary business is the rental of such vehicles for periods of less than forty-five days, including renewals, to another person shall collect the daily vehicle rental fee from the renter of each vehicle rented.

Under this interpretation, the daily fee is imposed on all rentals by a retailer who fits within the classification (i.e., a retailer whose primary business is renting vehicles for less than 45 days), including rentals that exceed 44 days.

We conclude that the latter interpretation is more consistent with the language of the statute. In general, we endeavor to give substantive effect to every statutory term. The first interpretation does not give effect to the phrase "whose primary business is ..." because the phrase would not have any bearing on whether or how the tax was imposed. Moreover, the statute does not expressly state that the tax is calculated based on the number of days the vehicle is rented. Rather, the 45-day provision modifies the type of retailer who is obligated to collect the tax.

For these reasons, we conclude that a retailer, whose primary business is the rental of motor vehicles for less than 45 days, must collect the daily rental fee on all vehicles it rents. The fee is calculated on the number of days of rental, even if the total number of days the vehicle is rented exceeds 44 days. If the retailer's primary business is rental of vehicles for 45 days or more, then the retailer cannot collect the daily rental fee, even if some vehicles are rented for less than 45 days.

Miscellaneous

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this 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
Tele: (303)866-5627
Email: ntillquist@spike.dor.state.co.us

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Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

GIL-10-001

July 12, 2010

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: General Information Letter

Dear XXXXXXXXXXXX,

You submitted a request for information regarding the application of the daily rental fee. Due to recent budget reductions, the department has discontinued issuing general information letters. However, your letter raises an important issue and we have elected to issue a general information letter to address it. For more information about general information letters and private letter rulings, see regulation 24-35-103.5 which can be viewed on our web site at <http://www.colorado.gov/revenue/tax> and select FYI > Publications > Rulings.

Issue

1. Is the maximum daily rental fee calculated using 44 days or 45 days?
2. If a motor vehicle is rented for more than 44 days, including renewals, is a fee imposed on the first 44 days (\$88.00) or is the rental completely exempt from such fee?

Conclusion

1. The maximum daily rental fee is calculated using 44 days.
2. If a motor vehicle is rented continuously to the same customer for more than 44 days, including renewals, then the entire rental is exempt, including the first 44 days.

Background

Your company is in the business of renting motor vehicles for recreational purposes. Some rental agreements are for a period of less than 45 days, but some are for a

period greater than 44 days, including renewals.

Discussion

Colorado imposes a daily rental fee of \$2.00/day for motor vehicles rented for less than 45 days. Specifically, subsection 43-4-804(1)(b)(I), C.R.S., provides,

b) (I) Except as otherwise provided in subparagraph (III) of this paragraph (b), a daily vehicle rental fee, which shall be imposed on the rental of any vehicle rented in the state at the rate of two dollars per day. Any person who owns vehicles that are based in Colorado for rental purposes or who owns vehicles that are based in a state other than Colorado for rental purposes but rents such vehicles from a business location in Colorado and whose primary business is the rental of such vehicles for periods of less than forty-five days, including renewals, to another person shall collect the daily vehicle rental fee from the renter of each vehicle rented. The rental invoice shall list the daily vehicle rental fee separately as a Colorado road safety program fee.

This statute imposes a fee of \$2.00 per day for rentals that are less than 45 days, including renewals. This means that the maximum fee that can be imposed is \$88.00 (\$2.00 times 44 days).

Although not a model of clarity, this statute imposes the fee only when the rental period, including renewals, is less than 45 days. If the motor vehicle is rented for 45 days or more, including renewals, then no fee is imposed, including a fee for the first 44 days. In order to qualify for this exemption, the motor vehicle must be rented to the same person for 45 or more continuous days.

Miscellaneous

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this 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
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Email: ntillquist@spike.dor.state.co.us