



COLORADO
Department of Revenue

Taxation Division

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GIL-15-012

April 24, 2015

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Delivery Charge

Dear XXXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance to determine whether delivery charges separately stated on the invoice are subject to Colorado sales tax.

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

Is a separately stated delivery charges subject to Colorado sales tax because the customer is not notified that they could avoid the delivery charge if they pick up the meals at a restaurant location?

Background

Company is restaurant. Customers may order a meal in person at the restaurant, by phone, or on Company’s website. Company imposes a charge to deliver the meals to customers. Company’s software program calculates the amount due from the customer for the meal(s), delivery charge, and sales tax. The delivery charge is separately stated. A customer is not given written or oral notification that the delivery charge can be avoided if the customer picks up the meals at the restaurant, whether the order is phoned in or placed on Company’s website.

Discussion

Colorado generally does not levy sales tax on the sale of services. Transportation of tangible personal property between a retailer and a purchaser is generally considered a service and, thus, is not subject to sales tax.¹ Transportation charges are not taxable if they are both (1) separable from the sales transaction and (2) stated separately on a written invoice or contract.

The charges must be stated separately on a written invoice or contract.² Company represents that it separately states the delivery charge on an invoice. However, Company does not advise the customers that there is a delivery charge at the time the order is taken. We note in this regard that some companies selling similar products do not charge a separate delivery fee. Thus, it appears that the customer does not know at the time of the order that there is a delivery fee and, therefore, the customer does not make the decision to purchase the delivery service.³ Thus, stating the delivery fee only on the invoice the customer receives after the transaction is complete does not satisfy the "separately stated" requirement.

The second element that must be established is that the fee is separable from the sale of the goods. Stating the charges separately on the invoice does not, by itself, make the delivery charge separable from the sales transaction. The charges must be actually "separable" from the transaction for the sales tax exemption to apply. In order for a charge to be "separable" from the sales transaction, the transportation service must be provided after the taxable property is offered for sale and the purchaser must have the option to purchase the goods without the delivery charge. For example, the delivery charge is separable if the buyer has the option to use either the seller's transportation services or to use its own transportation.⁴

It appears in this instance that the delivery charge is separable from the transaction because Company does allow the purchaser the option to pick up the meal directly from Company's location or have Company deliver the meal.⁵ That is, the customer can purchase a meal from Company without also being required to have the meal delivered. However, the delivery charge does not meet the separately stated requirement because the customer is not aware that they are purchasing a delivery charge. Thus, the delivery charge is subject to sales tax.

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/tax for more information about state and local sales taxes.

¹ 1 CCR 201-5, Special Regulation 18 (SR 18), "Transportation Charges."

² Ibid. SR 18(c)

³ The customer may be making the decision to take advantage of the delivery service, but the customer is not making the decision to purchase the service.

⁴ Ibid. SR 18(b)

⁵ TPLR-09-004 (A delivery charge is generally considered separable from the sale of goods if the consumer has the option not to purchase the delivery service.) and 1 CCR 201-4 Department Regulation 39-26-102.7(a) (Delivery and installation charges not included in tax base if separately stated)

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