

STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-13-018

August 8, 2013

XXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Entry Towers

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXX ("Company") a request for guidance to determine whether entry towers at car dealerships are real property or tangible personal property and how taxes would apply.

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 regulation 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 regulation 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

Are company's charges related to entry towers subject to sales or use taxes?

Background

Company is a sign and visual communication company that offers full-service signage specializing in branding solutions. Company sells "entry towers," which are freestanding

structures that 'decorate' and display signage on the front of commercial buildings, such as at car dealerships. Entry towers are installed into a concrete foundation on a series of anchor bolts.

Company purchases entry towers as finished goods from manufacturers and hires third parties to install them. Company issues its invoice to either the customer or a general contractor who is building the customer's building. The invoice includes the costs of the entry tower, supplies, freight, and labor for installation of the entry tower.

Discussion

Colorado, as do most states, has specific rules governing contractors and construction contracts. Contractors are persons who incorporate tangible personal property into real property. The entry towers appear, in most cases, to be fixtures to real property. A fixture is tangible personal property that is affixed to real property and cannot be removed without substantial damage to the property.¹ The Department considers a number of factors in making a determination of whether property is a fixture, including whether the parties intended the item to be a fixture.² Although the various entry towers we viewed as part of the request for advice appear to be so affixed to the buildings as to be an integral part of the structure, their removal does not appear to cause substantial damage to property. We cannot determine in a general information letter, such as this, whether the entry towers are, in fact, fixtures to real property.

Assuming the entry towers are fixtures, the application of sales and use tax will depend on the type of contract Company, as a contractor, uses with the owner or, as a subcontractor, uses with the general contractor. Contractors who charge the owner, or subcontractor who charge the general contractor, a lump sum amount do not collect sales tax from the owner or general contractor. Instead, the contractor (or subcontractor) pays sales tax when it acquires the building materials from the supplier or manufacturer. If the entry tower manufacturer does not collect sales tax from Company when Company acquires the tower, then Company must pay use tax. The use tax is calculated on the price paid to the entry tower manufacturer and the use tax calculation does not include Company's labor costs for installation.

If Company uses a "time-and-material" contract with the owner or general contractor, Company must collect sales tax from the owner or general contractor on the marked-up price of the building materials (e.g., the entry tower) but not on the labor charges (e.g., installation charges).³

As a general rule, a contractor collects state-administered local sales taxes whenever state sales tax is due. If a contractor remits state use tax, then the contractor also remits state-administered local use taxes in whose jurisdiction the entry tower is ultimately installed. If

¹ Department Regulation 39-26-102.15. This regulation, as well as other Department publications, such as FYIs and rulings, can be viewed at www.Colorado.gov/revneue/tax > Tax Library.

² See, General Information Letter GIL 08-009 for a discussion of these factors.

³ See Department Special Regulation SR-10, "Contractors."

Company uses a time and material contract, Company must collect state sales tax and state-administered local sales taxes in those jurisdictions the entry towers are delivered to the general contractor or owner.

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
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