

STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

Barbara J. Brohl
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GIL-13-003

February 6, 2013

XXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Rental and Labor Charges

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on the rental of Company's equipment, labor charges in connection to the rental, and charges for chemicals used in connection with the rental of Company's equipment.

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. However, we note that you have requested a specific determination regarding your transactions. Such a specific determination is made only in private letter rulings. 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

1. Is the rental of Company's equipment subject to Colorado sales and use tax?
2. Are labor charges for the supervision and assistance of Company's equipment subject to Colorado sales and use tax?
3. Are charges for chemicals that are required for the proper use of Company's rental equipment subject to Colorado sales and use tax?

Background

Company is headquartered outside of Colorado, but has customers in Colorado who rent motors and tooling for their oil drilling needs. Company also charges for the use of disposable products, such as chemicals, which aid in the use of equipment. In addition, Company employees travel to drilling locations and stay on-site to supervise and assist with the functioning of the rental equipment. Customers are charged for these labor costs. One of Company's customers has stated that Company should not be charging tax on their invoices because the "materials were used within the service and [are] not a specific material purchase." Therefore, Company is requesting a determination of the tax required to be collected and remitted on their rentals and services.

Discussion

The Department does not have a regulation or publication that specifically addresses your inquiry. The following is a general discussion of the tax issues surrounding your request.

Colorado imposes sales and use tax on the sale and rental of tangible personal property.¹ In general, Colorado does not levy sales tax on services, except in certain circumstances.

If a retailer provides both taxable tangible personal property and non-taxable services, the question arises whether some, all, or none of the price is taxable. This will generally be determined on whether the "true object" of the transaction is the sale of a service or rental of tangible personal property. This determination can be complicated and is often reached by looking at a variety of factors. For example, the Department has determined that when a retailer provides a truck and an operator, the transaction is not generally considered a taxable rental of property.² In such cases, the Department tends to view the true object of the transaction as a non-taxable service if the operator controls the truck. Any determination must closely examine the facts and the contractual terms between the parties. On the other hand, if the retailer separately states the charge for the truck and operator, then the transaction is generally treated as a taxable rental of property and a non-taxable provision of a service. As I mentioned earlier, we cannot make a determination here in a general information letter and with the few facts provided.

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.

¹ §39-26-104 and 202, C.R.S.

² See, Department Regulation 39-26-102.23, which can be viewed at www.colorado.gov/revenue/tax > Tax Library > Regulations > Final Regulations > Sales Tax

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,

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