

STATE OF COLORADO

DEPARTMENT OF REVENUE

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Bill Ritter, Jr.
Governor

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XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

Re: Taxability of FCC license and coordination fee

Dear XXXXXXXX,

This letter is in response to your request for guidance on the taxability of FCC licenses and a coordination fee charged consumers in connection with the sale of two-way radios. I apologize for the delay in responding to your request.

The Department issues two types of written guidance: general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law and is not binding on the department. A private letter ruling is a determination of the applicability of tax to a specific set of circumstances and is binding in the department. A party requesting a private letter ruling must provide certain information and remit a fee. For more information about general information letters and private letter rulings, please refer to the Department's regulation 24-35-103.5, C.R.S., which is available on our web site at: www.colorado.gov/revenue/tax.

We will initially treat your request as one for a general information letter. You may resubmit this request for a private letter ruling.

Issue

Does Colorado sales or use tax apply to the charges for a FCC license and coordination fee charged to consumers who also purchase two-way radios?

Background

You provide the following information. You are a distributor of two-way radios. All users of two-way radios must obtain a license through the Federal Communications Commission (“FCC”) to legally operate their radio equipment. Once the license is obtained, it is valid for ten years. You invoice your customers for the radio equipment which you list separately on the invoice. It is not clear whether the customer is charged a fee for the FCC license separate and apart from the coordination fee. In any event, the “coordination fee” is charged on the invoice and separate from the price of the radios.

Discussion

Colorado imposes sales and use tax on sale and lease of tangible personal property and a limited number of services, including telecommunications services. See, §39-26-104, C.R.S. Two-way paging service is telecommunication service. See, Department FYI Sales 80. Two-way radio service may constitute telecommunications. §39-26-104(1)(c), C.R.S. Two-way radio service may also constitute mobile telecommunications service. See, Department regulation (39)26-104.1(c)(1)(7) (“The term “mobile telecommunications service” means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.”). In turn, 47 CFR 20.3 states that two-way radio service may constitute commercial mobile telecommunication service.

If the sale of the two-way radios, FCC license, and coordination fee constitute mobile telecommunications service, then charges for the FCC license and coordination fee are subject to tax if they are “charged for, or associated with,” the provisioning of mobile telecommunication service.

Charges for Mobile Telecommunications Services - The term charges for mobile telecommunications services means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

Department Regulation (39)26-104.1(c)(1); see, also, §39-26-102(12) (charges made in connection with sale of taxable goods are included in the calculation of sales tax).

You should be aware that private mobile radio service does not fall within the definition of commercial mobile telecommunications service. See, 40 CFR 20.3. If they do not qualify as mobile telecommunications service, the department would likely conclude that it does not also qualify as telecommunications service. However, we cannot provide in a general information letter a specific determination whether the two-way radio, FCC license, and coordination fee constitute telecommunications service or mobile

telecommunications service. Moreover, your letter does not contain sufficient information to make any such determination.

Finally, these charges are taxable if they are not separable from the sale of the radios even if these fees were not part of telecommunication or mobile telecommunication services,. In general, the sales price upon which tax is calculated is the gross value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer. §39-26-102(12), C.R.S. Sales tax does not include charges for non-taxable charges that are both separately stated on the invoice and that are separable from the sale of the taxable property. See, *AD Stores v Department of Revenue*, 19 P3d 680 (Colo. 2001). See, also, Illinois Dept. of Rev. General Information Letter ST 08-0133-GIL, 09/26/2008 (FCC and coordination fee may be taxable if inseparable from sale of two-way radios). Again, we cannot provide in a general information letter a specific determination whether the two-way radio, FCC license, and coordination fee are separable from the sale of the radios. Moreover, your letter does not contain sufficient information to make any such determination.

Miscellaneous

Pursuant to state law and department regulation 24-35-103.5, the Department will make public a redacted version of this letter. Your letter requesting this general information letter is not made public. I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments, or objection concerning the redacted letter.

We hope this is helpful. As noted earlier, you may request a private letter ruling which will provide a determination regarding your specific circumstances.

Sincerely,

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