

STATE OF COLORADO

DEPARTMENT OF REVENUE
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Bill Ritter, Jr.
Governor

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Executive Director

GIL-2009-026

May 13, 2009

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: XXXXXXXXXXXX Bank leases

Dear XXXXXXXXXXXX,

This letter is in response to your request for guidance on leases sold to XXXXXXXX XXXXX ("Bank") by an affiliate, XXXXXXXXXXXXXXX ("Corp"). I apologize for the delay in responding to your request. The Department has promulgated a regulation governing the issuance of 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.

Issues

1. What are the guidelines for tax compliance for finance leases sold by Corp to Bank?
2. Are there different methods for taxing profits of an industrial bank?

Background

You provide the following information. The Federal Deposit Insurance Corporation ("FDIC") and the [a state] XXXXXXXXXXXX State Banking Commission approved an industrial bank application for Bank. Bank has only one office location, which is in XXXX [state].

Bank will provide lease financing and business capital loans to small business throughout the United States. As part of the startup, Bank purchased lease contracts from its affiliate, Corp. Some of the leases have equipment locations in Colorado.

Under a master servicing arrangement, Corp will provide all back office support for the Bank, including invoicing, payment processing, customer service, collections and other services for the Bank. Bank intends to register with the Colorado Department of Revenue for corporation/financial institution income taxes. Corp believes that filing sales/use tax returns and remittances should be made under its name because it is responsible for invoicing of customers.

Discussion

Colorado imposes sales and use tax on sale and lease of tangible personal property. See, §§39-26-104, 102(23) and 713(1)(a), C.R.S. The department has a number of resources available to taxpayers regarding the sales and use tax obligations for equipment leases. See, e.g., Department FYI Sales 56 (Sales Tax on Leases of Motor Vehicles and Other Tangible Personal Property). Please note that a finance lease is a credit sale and the sale of the lease accelerates the tax obligation. See, Colorado GIL-2008-023.

Although a taxpayer may engage an agent to provide invoicing, collection, and other services, the obligation to file a tax return and remit payment is the responsibility of the taxpayer. The business registration with the Department must be under the name of the taxpayer, not its agent. For more information about how to register and obtain a sales and use tax license, see Department FYI Sales (Sales Tax Licenses and Filing Requirements).

The department also has a number of resources available to taxpayers on issues related to income tax. For example, see FYI Income 59 regarding apportionment of income for financial institutions, including industrial banks, for income tax years beginning on or before December 31, 2008. Colorado recently amended its laws regarding income apportionment and these changes will apply to tax years beginning on or after January 1, 2009. 39-22-303.5, C.R.S. You can view proposed new regulations on these changes by visiting our web site at www.colorado.gov/revenue/tax and go to "Taxation" > "FYI / Publications" > "Rules and Regulations" > "Proposed Tax Regulations."

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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