STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-11-007

May 5, 2011

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Re: Taxability of Intermediate or Freight-in Charges.

Dear XXXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXX ("Company") a request for guidance on the application of sales tax on "freight-in" charges. We apologize for the delay in preparing this response. The 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 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.taxcolorado.org > FYI/Publication > 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 freight-in charges, also referred to as inbound freight charges, subject to Colorado sales or use tax?

Background

Company is an industrial parts distributor with many locations throughout the United States. The tangible personal property that Company purchases from suppliers is resold through Company's regional distribution centers, shops and sales branches. Company must pay

freight-in charges to suppliers so the tangible personal property can be shipped by a common carrier to Company branches or customers. In addition, Company pays outbound freight charges to deliver the tangible personal property to customers. On invoices, Company separately states both freight-in charges and outbound freight charges. The question at issue is whether Company is required to pay tax on the freight-in charges, which are made prior to the sale and title transfer of the goods in question.

Discussion

Colorado levies sales and use tax on the sale, use, consumption or storage of tangible personal property. §§39-26-104(1)(a) and 202, C.R.S. The purchase price paid by customers, on which sales tax is computed, includes all costs incurred by the retailer in making a sale. Services that occur after the sale are generally not taxable. *A.D Stores v Department of Revenue, 19 P3d 680 (Colo. 2001).*

Transportation charges related to the purchase of tangible personal property are generally not taxable, unless they are both inseparable from the sale, or not stated separately on invoices for taxable goods, or are freight-in charges. The department presumes transportation services are separable from the sale of goods, regardless of whether title to the goods has passed from the buyer to seller at the time the transportation service is rendered. If a purchaser has no realistic option but to use the transportation services of the seller, then the transportation charge is not separable and is taxable.

The department promulgated Special Regulation 18 (Transportation Services) which sets forth the following rules governing the taxability of transportation charges:

1. The transportation of tangible personal property between a retailer and purchaser is a service presumed to be not subject to sales or use tax. 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.
   a. **"Transportation charges"** include carrying, handling, delivery, mileage, freight, postage, shipping, trip charges, stand-by, and other similar charges or fees.
   b. **Separable charges**. Transportation charges are separable from the sales transaction if they are performed after the taxable property or service is offered for sale and the seller allows the purchaser the option either to use the seller's transportation services or use alternative transportation services (including but not limited to the purchaser picking up the property at the seller's location). The fact that transportation charges are stated separately does not, in and of itself, mean the charges are a separable charge.
   c. **Stated Separately**. Transportation charges will be regarded as "separately stated" only if they are set forth separately in a written sales contract, retailer's invoice, or other written document issued in connection with the sale.
   d. **Intermediate or "Freight in" charges**. Transportation charges incurred in connection with transporting tangible personal property from the place of production or the manufacturer to the seller or to the seller's agent or representative, or to anyone else acting in the seller's behalf, either directly or through a chain of wholesalers or jobbers or other middlemen, are deemed "freight

-in" charges and are not a transportation charge exempt from tax. (emphasis added)

e. **Overstated Transportation Charges**. The amount of transportation charges excluded from the calculation of tax shall not materially exceed the seller's costs of the transportation.

The transportation charges rendered to suppliers for the shipment of tangible personal property by a common carrier to Company's branches fall under the category of freight-in charges. Subject to the regulations put forth by the department, these freight-in charges are subject to Colorado sale or use tax.

Miscellaneous

Pursuant to state law and department regulation 24-35-103.5, noted above, 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.

I hope this is helpful. Please feel free to contact me if you have any questions.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue