

# STATE OF COLORADO

DEPARTMENT OF REVENUE  
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Bill Ritter, Jr.  
Governor

Roxanne Huber  
Executive Director

GIL-2009-004

August 20, 2009

XXXXXXXXXXXX  
Attn: XXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX

Re: taxability of gift baskets

Dear XXXXXXXXXXX,

You request guidance regarding the applicability of Colorado sales and use tax to the sales of gift baskets. The Department issues general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law, does not provide a specific determination, 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](http://www.colorado.gov/revenue/tax). You have requested a general information letter.

## Issue

How are sales and use tax applied to the sale of gift baskets that contain both taxable and non-taxable items?

## Background

Your company provides tax guidance to clients. You request guidance on the taxability of the sales of gift baskets that contain both taxable and non-taxable items, such as gift baskets containing exempt food items and taxable tangible personal property.

## Discussion.

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible personal property. §39-26-104(1), C.R.S. Colorado exempts from sales and use tax

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certain goods, such as food sold for home consumption.

In general, sales tax is calculated on the entire purchase price when a retailer bundles the sale of both exempt and taxable items for one price. Sales tax is calculated only on the taxable item if the price for the exempt item is separately stated and is separable from the sale of the taxable item. See, *AD Stores v. Department of Revenue*, 19 P3d 680 (Colo. 2001). For example, if a retailer sells a gift basket that contains taxable cosmetics and a gift card for an exempt spa services, then sales tax is calculated only on the price of the cosmetics if the price is separately stated. If the price is not separately stated, then sales tax is calculated on the total price.

There is an exception to this general rule. A retailer selling both taxable and non-taxable items for a single price can pay use tax on the taxable item and sell the exempt items without charging sales tax if the price of the taxable item is *de minimis*. For example, if the price of the basket in which the exempt items are sold is *de minimis*, and the retailer does not separately state on the invoice the price for the basket and the price of the exempt items, then the retailer should pay use tax on the gift basket and sell the gift basket without charging sales tax. Although the department has not formally addressed what constitutes *de minimis* price, the department will likely treat as *de minimis* a taxable item whose price is ten percent (10%) or less than the total purchase price. See, e.g., Ark. Regs. GR-93(D)(2)(a) (De Minimis Exclusions for Bundled Transactions); Ky. Rev. Stat. Ann. § 139.215(4)(e) [Eff. 7-1-09.] (Taxation of Bundled Transactions). Use tax is calculated based on the cost to the retailer of purchasing the basket from the supplier. *International business Machines v Department of Revenue*, 601 P.2d 622 (Colo. 1979).

### **Miscellaneous**

This letter applies to state and state-collected sales and use taxes. The Department does not administer sales and use taxes of home-rule cities and counties. You should contact those jurisdictions for information about the applicability of their taxes. The Department maintains a complete list of state-collected local jurisdictions in Department publication DRP 1002, which can be viewed on the department's web site at [www.taxColorado.org](http://www.taxColorado.org).

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted version of the 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 version of the letter.

Sincerely,

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