

STATE OF COLORADO

DEPARTMENT OF REVENUE
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Bill Ritter, Jr.
Governor

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Executive Director

GIL-2009-027

May 13, 2009

XXXXXXXXXXXXX
Attn: XXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXxXXX

Re: taxability of labor costs

Dear XXXXXXXXXXXXX,

You request guidance regarding the taxability of services performed by XXXXXX (the "Company"). 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.taxcolorado.org > FYI/Publications > Rulings.

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

Issue

Are charges for labor for installation, troubleshooting, un-installation, reinstallation, and trip fees, subject to sales tax?

Background

The Company is in the business of manufacturing and selling vehicle tracking units. The unit communicates with GPS satellites to determine the vehicle's location. Location information is sent by the unit to the customer's office computer via cellular communications. Units are sold to customers as either cash sales or as a lease-to-

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purchase agreements. A charge for installation of the units is included in the purchase price and is not separately stated on the customer's bill. Units are shipped to the customer and the Company sends an employee to the customer's location to install the unit. The installer disassembles the vehicle's dashboard, connects the unit to the battery and on-board computer, and tests communications with the unit.

If a problem with the unit develops later on, the Company sends an employee to the customer's location, disassembles the dashboard, and troubleshoots the problem. The customer is charged for the service of troubleshooting the unit. If the problem unit must be removed and another unit installed, each of these tasks is separately charged. The customer receives a bill stating separately stating each labor charge and a separate trip fee to cover traveling expenses.

Discussion.

Colorado imposes sales and use tax on the sale, use, storage, or consumption of tangible personal property. §§39-26-104 and 202, C.R.S. Charges for services are generally not subject to sales tax. However, when a retailer sells taxable goods and, in connection with that sale, charges the customer for maintenance or service warranties, the charge for the warranty is included in the sales tax calculation. §39-26-105(2), C.R.S. Similarly, if a retailer leases goods to a lessee and, in connection with that lease, charges the lessee a fee for maintenance or service warranty, then the charge for such service is included in the sales tax due on lease payments. Department Regulation (39)26-105.2.

There are two exceptions to this rule. First, if the contract for maintenance or service is separate from the contract for the sale or lease of the goods, then the retailer should not include the charge for the maintenance or service contract in the sales tax calculation. §39-26-105(2), C.R.S.

Second, even if there are no separate contracts for the sale of goods and warranty service, the retailer may request authorization from the department to use a ratio of the values of taxable goods and non-taxable services to calculate the sales tax. §39-26-105(2), C.R.S. Please contact the Department's Taxpayer Service Division if you request this authorization.

Finally, we note that if the retailer requires a customer to purchase services as part of the purchase of taxable goods, then the charge for services is subject to sales tax. For example, a retailer who, as part of the sale of goods, requires a customer to use the retailer's transportation service to take delivery, must collect sales tax on the transportation service charge even if the charge is separately stated on the invoice. See, Department Special Regulation 18 (Transportation Charges).

As noted earlier, you can submit your request as a private letter ruling if you would like a specific determination regarding the circumstances set forth above.