

STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-13-023

October 2, 2013

XXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Lease of Medical Equipment

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on the lease of Company's medical equipment.

The Colorado Department of Revenue ("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 on 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.colorado.gov/revenue/tax > Tax Library > 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

Is sales tax collected at the inception of the lease or on the rental payments?

Background

Company is an out-of-state lessor of medical equipment who leases medical equipment to veterinarians, doctors, and dentists who are located in Colorado. Company uses two types of contracts. One contract has monthly rental payments and a purchase option of one dollar at the end of the lease term. The other contract also has monthly rental payments but an optional purchase option which is priced at the fair market value of the equipment at the end of the lease term.

Discussion

There are two common types of leases. A “true” lease is the sale of a possessory right to use property for a limited period of time. A “finance” lease is a credit sale in which installment payments are made. A finance lease is typically one in which the buyer/lessee cannot terminate the lease before its expiration date, the buyer assumes all or many of the responsibilities typical of ownership (risk of loss, insurance, property taxes, maintenance), claims a depreciation expense on its federal income tax return, and “purchases” the property at the expiration of the lease for a nominal amount. The seller/lessor in a finance lease creates a security interest in the property during the term of the “lease” by retaining at least nominal title to the property.

Colorado levies sales and use tax on leases of tangible personal property.¹ Both true leases and finance leases are subject to state and state-administered sales and use taxes. Moreover, the price at the expiration of the lease for the purchase of the property, whether at fair market value or a nominal price, is taxable because the option payment is consideration paid in acquisition of the property.² Nevertheless, the distinction between the two leases is important because the tax liability can take place at different times.

A lessor of a “true lease” must pay sales taxes when it acquires the property if the lease term is three years or less (referred to as a short term lease), unless the lessor obtains prior permission from the Department to collect sales or use tax on lease payments.³ If the lessor using a short term lease did not pay Colorado sales tax when it acquired the property (such as the case may be when the lessor is located outside Colorado when it purchased the property), then lessor must pay use tax when the property is first used in Colorado, unless the Department authorizes the lessor to collect use tax on each payment, including the purchase payment at the end of the lease. Lessor using a short term lease can claim a credit for sales tax paid to another state when lessor first acquired the property. However, if the lessor using a short term lease is granted leave to collect use tax on the lease payments, then the tax is not offset by any tax paid in another state.⁴

If the lessor uses a lease that is more than three years in duration (referred to as a long term lease) or if the lease is a finance lease⁵ (regardless of whether it is more or less than thirty month duration), then lessor must collect sales or use tax on the lease payments, including the final “purchase” payment, and lessor does not have the option to pay sales or use tax when it first acquires the property. If lessor paid sales tax to another state when it

¹ §§39-26-102(23) and 713(1), C.R.S. You can view statutes on the Department’s web site at www.colorado.gov/revenue/tax > tax library > statutes.

² §39-26-102(5) and (7)(a), C.R.S (tax computed based on consideration paid by purchaser).

³ A lease is treated as a sale for sales tax purpose and the sale is deemed to have occurred when the lease is first executed. Department Private Letter Ruling 09-004.

⁴ The credit is available only to the person who is liable for the tax. In the case of a short term lease, the lessor is liable, as purchaser, for the sales tax when it acquired the goods and for the Colorado tax when it leases the goods. In the case of long term leases, the lessor is liable for the other state sales tax as the purchaser of the goods, but the incidence of taxation for Colorado taxes falls on the lessee because taxes are levied on lease payments.

⁵ §39-26-111, C.R.S. and General Information Letter GIL-08-023 (amended). You can view statutes and rulings on the Department’s web site at www.colorado.gov/revenue/tax > Tax Library.

first acquired the property, that tax cannot be used as a credit to offset the tax due on lease payments.

The Department also collects sales taxes for statutory cities and counties, but not home rule cities and counties.⁶ Statutory cities and counties levy sales tax on leases of tangible personal property, including medical equipment, but do not levy use tax on such goods. The Department also collects sales and use tax for special districts, whose taxes apply on the same transactions and uses to which state taxes apply.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/revenue/tax for more information about state and local sales taxes.

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

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue
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⁶ See Department publication DRP 1002 for a list of statutory cities and counties, as well as home rule cities and counties. You can view statutes on the Department's web site at www.colorado.gov/revenue/tax > Tax Forms.