



COLORADO
Department of Revenue

STATE OF COLORADO

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John Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-16-017

August 5, 2016

XXXXXXXXXXXXXXXXXX
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Re: Mobile Home

Dear XXXXXXXXXXXXX,

You (“Taxpayer”) submitted a request for guidance regarding the application of sales tax to the sale of a mobile home.

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, but 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 Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

What is the tax base on which sales tax is calculated for the sale of a mobile home that is placed either on a permanent or temporary foundation?

Background

Taxpayer owns a mobile home park in Colorado. Taxpayer represents that its park has empty spaces that are difficult to fill because owners of mobile homes rarely move the home. Taxpayer states that it is considering becoming a retailer of mobile homes in order to fill these

empty spaces in the park. Taxpayer intends to purchase a new mobile home from a manufacturer and incur a variety of expenses in order to make the home ready for sale. Taxpayer will retain ownership of the land in most cases and install the mobile home on jacks which will serve as the foundation. However, Taxpayer may sell a mobile home to a person who owns the land, in which case the mobile home will be placed on a permanent foundation. Taxpayer offers as an example the following scenario. Taxpayer purchases a new mobile home from a manufacturer for \$50,000 plus \$5,000 to ship the home to the park. Taxpayer then incurs various costs, such as \$1,000 in materials, on which Taxpayer pays sales tax to the retailer, and \$4,000 in labor costs for setting the home and installing utility service. Taxpayer then offers the home for sale for a lump sum price of \$100,000, which does not separately set forth charges for the mobile home, shipping, installation labor, and other installation materials.

Structure of Analysis

To determine the tax base on which tax is calculated, the Department will examine the following questions:

1. Is there a sale of tangible personal property under § 39-26-104, C.R.S.?
 1. Does the mobile home qualify as a manufactured home pursuant to § 39-26-721, C.R.S.?
 2. Is the mobile home real or tangible personal property at the time of sale to the homeowner?
 - i. If the mobile home is tangible personal property when sold to the ultimate homeowner, what is the tax base and who pays the tax?
 - ii. If the mobile home is real property at the time of the sale to the ultimate homeowner, what is the tax base and who pays the tax?

Discussion

Colorado imposes sales tax on the sale of a manufactured home.¹ Sales tax on a manufactured home is based on 52% of the sale price from the seller to the buyer.²

The manufactured home may be designed for installation on a temporary or permanent foundation³. A mobile home qualifies as a manufactured home if it is constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., factory-built residential requirements, or mobile home standards⁴.

In determining how and when tax is calculated and collected, it is important to distinguish between, on the one hand, tangible personal property that is so permanently attached to the real property at the time of the sale to the homeowner that it is treated as real property and, on the other hand, tangible personal property that retains its character as tangible personal property at the time of the sale even though it rests on real property.

1. *Mobile Home on Temporary Foundation.*

¹ See, §§ 39-26-104 and 721 and § 24-32-3302(10), C.R.S.

² § 39-26-721, C.R.S.

³ See § 24-32-3302(20), C.R.S.

⁴ See definitions in §§24-32-3302(10) (factory-built residential structure), 3302(20) (manufactured home) and 3302(24) (mobile home), C.R.S.

In the case where the mobile home rests on temporary foundations, the person selling the mobile home to the ultimate homeowner is treated as a retailer selling tangible personal property. The sale from the mobile home manufacturer to the retailer is a nontaxable sale for resale. If the retailer purchases other materials used for installation, those purchases are also a nontaxable wholesale purchase for resale if the materials are transferred to the ultimate homeowner. If those materials are not transferred to the buyer, the sale from the material supplier to the retailer is subject to sales tax. When the retailer sells the mobile home to the ultimate homeowner, sales tax is calculated on 52% of the sales price (\$100,000). Retailer must collect the tax from the ultimate homebuyer.

2. Mobile Home on Permanent Foundation.

In the case of a sale of a mobile home installed onto a permanent foundation, the person purchasing the mobile home from the manufacturer will likely be viewed as a contractor making changes to real property and special tax rules apply. A contractor, who uses a lump sum contract (i.e., a contract where the price for labor and materials are not separately stated) to sell the mobile home is treated as the consumer of the tangible personal property, including the mobile home itself, used to fulfill that construction contract. Because the contractor is deemed the consumer of all materials, the purchase from the mobile home manufacturer is treated as a retail sale and the contractor must pay sales tax to the manufacturer (or use tax to the Department if the sale takes place outside Colorado). The tax is based on 52% of the price charged by the manufacturer. If the manufacturer's shipping costs are optional (contractor can use another shipping company or pick up the mobile home from the manufacturer), then the transportation charge is not included in the sales tax calculation for the mobile home.⁵ If the manufacturer's shipping costs are mandatory, then the shipping charge is included in the sales tax calculation (which means that only 52% of that transportation charge is subject to tax) for the mobile home.⁶ Contractor's labor costs for installing the mobile home on the foundation are not included in the calculation of the tax paid to the manufacturer. Because the only exemption applicable here is that 48% of the manufactured home price is exempt from sales tax, any additional purchases of other materials from suppliers (other than from the manufacturer) are subject to tax at 100% of the price for the materials. The contractor does not collect any tax from the homeowner.

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/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

⁵ Department Rule 1 CCR, 201-5, Special Regulation 18.

⁶ Ibid.

within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Neil Tillquist
Colorado Department of Revenue
Office of Tax Policy & Analysis