

STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

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GIL-13-004

February 6, 2013

XXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Special District Taxes

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of your client ("Company") a request for guidance to determine whether Company's natural gas and electricity purchases are subject to special district taxes.

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

Are Company's natural gas and electricity purchases subject to special district taxes? If so, how does Company remit the underpayment of special district taxes for their past purchases of natural gas?

Background

Company operates a processing facility located in Adams County and is in a special district jurisdiction that levies a sales and use tax. Company is paying state, county and special district taxes on its electricity purchases. Company has also conducted energy studies on two electric and two gas accounts, which Company claims result in a seventy-five percent exemption for Company's electrical use and one-hundred percent exemption of Company's gas usage (non-production gas usage is delivered to the plant through separate gas accounts and gas lines). Company understands FYI Publication Sales 71 to suggest that Company may not be eligible for an exemption from the special district taxes.

Discussion

Colorado levies sales and use tax on the sale, use, storage, and consumption of tangible personal property. However, the sale of fuel, such as natural gas and electricity, for manufacturing and other industrial processes is exempt from state sales and use tax.¹ Sales of fuel for residential purposes and sold to the occupant is also exempt from state sales and use taxes.²

The Department administers the sales taxes of certain cities, counties and special districts. In general, if a transaction is subject to sales tax or an exemption at the state level, the transaction is also taxed or exempted at the local level, although there are some differences not relevant here. State-administered cities and counties may elect to levy tax on the sale of fuel for residential purposes.³ However, state-administered cities, counties, and special districts cannot elect to levy sales or use tax on fuel sales for industrial purposes that are exempt at the state level.⁴

Miscellaneous

This letter represents the good faith opinion of Department staff who are knowledgeable of 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-

¹ See, §39-26-102(21), C.R.S. You can view this statute at the Department's web site at www.colorado.gov/revenue/tax > Tax Library > Statutes.

² Colorado exempts "all sales and purchase of ...gas but not for resale, to occupants of residences, whether owned, leased, or rented by said occupants, for the purpose of operating residential fixtures and appliances that provide light, heat, and power for such residences...." §§39-26-715(1)(a) (II) and (2)(c), C.R.S.

³ §29-2-105(1)(d)(I)(B), C.R.S.

⁴ See, Regional Transportation Authority, Scientific and Cultural Facilities District, Baseball District, Mental Health Care Service Districts, Forest Improvement District, and Local Improvement Districts (32-9-119(2)(a), 32-13-107(1)(a), 39-14-114(1), 32-17-113(1), 32-18-107, 32-19-112(1), and 30-20-604.5, C.R.S.).

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,

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