



COLORADO
Department of Revenue
Taxation Division

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GIL-14-016

September 9, 2014

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Prepaid Fuel and Transportation Charges

Dear XXXXXXXXXXX,

You submitted on behalf of your client ("Company") a request for guidance to determine whether prepaid gasoline or transportation charges are subject to Colorado sales or use tax.

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 Rule 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 Department Rule 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

- 1) Is Company required to collect sales tax on a prepaid fuel charge, assuming that such charge is separately stated in the rental contract or customer invoice?

- 2) Is Company required to collect sales tax on the freight and transportation charges billed to the customer, assuming such charges are separately stated on the sales contract or customer invoice?

Background

Company leases vehicles to both individuals and business and operates a referral car sales business. As a part of its leasing services, Company provides an option to its customers to prepay for gasoline at the beginning of the rental contract. The amount of the prepaid gasoline charge is equal to the average pump price in the area for the full tank of gasoline in the leased vehicle. If the customer elects this option, then the customer may return the vehicle with an empty tank of gasoline without an additional charge.

Company also operates a referral car sales business. At times, a customer will request to purchase a specific vehicle that is not located at the location closest to the customer. In this event, Company will arrange for the delivery of the vehicle from its current location to the location where the customer will purchase the vehicle. Company then charges a fee for this service and passes on to the customer the costs associated with the delivery of the vehicle.

Discussion

1. Prepaid Gasoline

Colorado levies sales and use tax on the rental of motor vehicles.¹ Tax is calculated on the purchase price.² The purchase price means the price paid by the consumer and includes the total amount received in money.³ However, in some instances, charges paid by a purchaser are not included in the calculation of sales tax.

Generally, gasoline is exempt from state sales and use tax.⁴ Company asserts that a customer has the option to purchase Company's prepaid gasoline and that the charge is separately stated, or customer may purchase gasoline from another gasoline retailer.

Therefore, the prepaid gasoline charges may not be taxable so long as the charges are separately stated and optional. If the customer is required to purchase the prepaid gasoline at the time of purchase, the prepaid gasoline charge may be considered taxable.

2. Freight and Transportation Charges

Transportation of tangible personal property between a retailer and a purchaser is generally considered a non-taxable service.⁵ However, transportation charges may be considered part of the taxable purchase price for the sale of the good when the transportation service is inseparable from the sale of the good, is not separately stated on the invoice for taxable goods, or is a freight-in charge.⁶

¹ §§39-26-102(23) and 713(1)(a), C.R.S

² §39-26-104(1)(a), C.R.S

³ §39-26-102(7)(a) and 102(5), C.R.S. See, also, Department rule 39-26-102.7(a)

⁴ §39-26-715(1)(a)(I), C.R.S

⁵ Department Rule 1 CCR 201-5: SR 18.

⁶ Ibid.

Freight-in charges are transportation charges incurred in connection with transporting tangible personal property from the place of production or from the manufacturer to the seller or to the seller's agent or representative, or to anyone else acting on the seller's behalf, either directly or through a chain of wholesalers or jobbers or other middlemen and are not a transportation charge exempt from tax.⁷ Generally, transportation charges to bring a product to market are freight-in charges and are taxable. In contrast, transportation charges to ship a product after a sale are not taxable if separately stated.

Company represents that it "will arrange for delivery of the vehicle from its current location to the location where the customer will purchase the vehicle." It is the Department's understanding that, generally, the purchase takes place after the vehicle is transferred to the new location. Therefore, it appears that the vehicle is not brought to market until it is present at the new location. Under these circumstances, it appears that these transportation charges are freight-in charges and, thus, subject to sales or use tax. However, if for some reason the consumer purchases the vehicle before the vehicle is transferred to the new location, the transportation charge may not be a freight-in charge and not taxable.

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

⁷ Ibid.