

STATE OF COLORADO

DEPARTMENT OF REVENUE
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Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

GIL-2009-017

July 7, 2009

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: taxability of sales of propane and firewood

Dear XXXXXXXXXXXXX,

You request guidance regarding the applicability of Colorado sales and use tax to the sales of propane and firewood. 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.colorado.gov/revenue/tax. You have requested a general information letter.

Issue

Is the sale of propane and firewood over the counter at retail locations subject to sales and use tax?

Background

Your company provides tax guidance to clients. You request guidance on the taxability of sales of propane and firewood sold over the counter at retail locations. You state that propane is sold in containers of 20 to 40 pounds and is the type typically used in gas grills. The firewood is purchased in bundles.

Discussion.

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible

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personal property. §39-26-104(1), C.R.S. Colorado exempts from sales and use tax propane and wood sold for to occupants of residences, whether owned, leased or rented by the occupants, for the purpose of operating residential fixtures and appliances, that provide light, heat, and power for such residences. §39-26-715(1)(b), C.R.S. and department regulation (39)26-715.1(a)(II).¹ A recreational vehicle used for non-commercial purposes is a "residence" and fuel used in such vehicles is exempt.

A retailer must maintain appropriate records that establish that the sale of propane or firewood is an exempt sale for residential use. As is true of all exemptions, the sale of propane or firewood is presumed taxable and the retailer has the burden of establishing with competent, sufficient, and verifiable records that a sale is exempt.² If the retailer has a reasonable doubt regarding the applicability of the exemption, the retailer should collect the tax. §39-26-703(1), C.R.S. The purchaser may file a request for a refund within 60 days of the purchase.

An over-the-counter retailer, such as a grocery store or hardware store, has not overcome the presumption that tax applies simply by showing that many of its customers are residential consumers. The department will accept, subject to the caveats noted below, as adequate documentation of an exempt sale of propane that the sale was for an amount of propane no greater than that necessary to fill a 20 lbs. propane tank. An over-the-counter retailer may make an exempt sale of propane in or into a propane tank no greater than 40 lbs used for recreational vehicles if the retailer records from the recreational vehicle registration the name of the vehicle owner, the name of the purchaser, the vehicle identification number, and the type of vehicle listed

¹ Department regulation (39)26-715.1(a)(II) states, in pertinent part, "Gas and electricity when sold for residential use are exempt from sales tax. The term "residential use" has the following meaning: the use of gas or electricity by the individual customer exclusively for domestic purposes such as lighting, refrigeration, cooking, water heating, space heating and air conditioning, in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, townhouse or mobile/trailer home used exclusively for domestic purposes. Residential use includes service to building appurtenant to the residence including garages, barns, and other minor buildings for use of the residents served through the residential meter."

Users in a private home or individual living unit, such as apartments, condominiums, townhouses and mobile/trailer homes, who are served through a single meter and whose rate has been classified by P.U.C. statute or regulation as residential, are automatically exempt.

Users in multi-unit apartments, mobile/trailer home parks or condominium and townhouse associations who are billed through a master meter and are taking service under a commercial rate may nevertheless qualify for this exemption providing the gas or electricity is used for residential use as defined herein.

Sales of butane, propane, fuel oils, coal, coke or wood are exempt from state sales tax when used for residential use as defined above."

² §39-26-105(1)(c), C.R.S. "The burden of proving that any retailer is exempt from collecting the tax on any goods sold and paying the same to the executive director, or from making such returns, shall be on the retailer or vendor under such reasonable requirements of proof as the executive director may prescribe."

on the registration. Sales of propane, regardless of the size of the tank, are exempt if the retailer delivers the propane into a tank located on residential property.

Firewood sold in bulk (e.g., a full, half, or quarter cord) is typically sold for residential use and is exempt. The department will accept, subject to the caveats noted below, as adequate documentation of an exempt sale of firewood that the sales was in bulk of at least a quarter cord of firewood. However, small sales of firewood are often sold for camping purposes. Similarly, propane sold in small bottles (e.g., one pound bottles) is often used for camping (e.g., portable camping stoves and portable lanterns). Camping does not involve a "residence" as that term is commonly understood and used in statute and, therefore, does not fall within the exemption statute. Although there may be instances where such fuels are used for an exempt purpose, the retailer should collect sales tax. The taxpayer can submit a claim for refund upon adequate evidence that the purchase falls within the exemption.

.The retailer should not make an exempt sale of propane or firewood if the customer's name, the volume of propane purchased by the customer, the type of container filled, or other facts raise reasonable doubts about the applicability of the exemption. For example, a retailer should collect sales tax if the customer pays with a check or credit card on which the cardholder is a business name, a vehicle registration is in the name of a business, or an over-the-counter retailer sells propane in tanks that hold more than 20 lbs. (or 40 lbs. if sold for use in a recreational vehicle).

Miscellaneous

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

Sincerely,

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