

STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

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Executive Director

GIL-12-011

November 6, 2012

XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX

Re: Reimbursable Expenses

Dear XXXXXXXXXXXX,

You submitted on behalf of your company ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on reimbursable expenses such as lodging, airfare, and car rentals.

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 reimbursable expenses, such as lodging, airfare and car rentals, charged to customers who request Company's presence at an event subject to Colorado sales or use tax?

Background

Company is in the business of renting two-way radios and wireless telephones to a wide range of customers, including organizers of professional sporting events. A rental generally includes two-way radios, accessories for the radios, and any additional equipment required

for usage. Depending on customer requirements, Company will assign its personnel to an event to address any additional communication needs that may arise during an event. If this is the case, Company bills customers for the “reimbursable expenses” of lodging, vehicle rental, and airfare, in addition to the equipment rental. A separate line item for each reimbursable expense is on the invoice as follows:

1 REIMBURSE EXP	Rental reimbursement of expense - car rental of 2 vehicles + gas
1 REIMBURSE EXP	Rental reimbursement of lodging – 3 rooms 15 nights
1 REIMBURSE EXP	Rental reimbursement of airfare- 5 round trip tickets

Additionally, one of the following situations applies depending on the customer:

1. Expenses are not marked up, and if requested by the customer, receipts can be provided as support for the reimbursable expense charges.
2. Expenses are marked-up and no receipts are provided to customer.
3. The reimbursed expenses are billed on a separate invoice from the rental equipment and may or may not include a mark-up and receipts may or may not be provided to customer.

Currently, Company is taxing the reimbursable expenses when they charge customers, whether these expenses are billed with the rental of the radios or billed separately.

Discussion

It is unclear from the request how employees assist customers and whether and how Company recovers the cost of employees who are sent to assist customers at an event. We can offer some general observations, but anything more detailed will require a request for a private letter ruling.

Colorado imposes sales and use tax on the sale and use, including rental, of tangible personal property, such as two-way radios. §39-26-104 and 202, C.R.S. See, FYI Sales 56 “Sales Tax on Leases of Motor Vehicles and other Tangible Personal Property.” In general, Colorado does not levy sales tax on services, except in certain circumstances. If a retailer both rents taxable tangible personal property and provides non-taxable services, and separately states on the customer’s invoice or contract the price for each, then sales tax is generally calculated only on the rental charge. Costs for goods and services consumed by the retailer to provide its services are generally not subject to sales tax even if the retailer itemizes these costs and recovers these costs from its customer.

There is at least one important exception to this general rule of non-taxable services and expenses related to those services. If the service is so intertwined with the sale or rental of goods as to be inseparable, then a determination must be made whether the true object of the transaction is a service or the sale or rental of tangible personal property. If the conclusion is that the true object of the transaction is a service, then charges for the service as well as any itemized charges related to that service are not taxable.

If, however, the conclusion is that the services are inseparable and the true object of the transaction is the sale or rental of tangible personal property, then the charges for the services and related charges are taxable.

There is not sufficient information in the request to determine whether the services provided by Company personnel are separable from the rental of the equipment and the true object of the transaction. Such determination can only be made in response to a private letter ruling request. If you would like the Department to treat this issue as a private letter ruling request, please feel free to contact me and we will assist you in that process.

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,

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