

STATE OF COLORADO

DEPARTMENT OF REVENUE
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Governor

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GIL-13-002

February 6, 2013

XXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Sales Tax Refunds When an Exemption Certificate Is Provided After the Sale

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for guidance regarding Company's proposed procedure to administer sales tax refunds when an exemption certification is provided after the sale.

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

Is Company's proposed procedure to administer sales tax refunds when an exemption certification is provided after the sale compliant with Colorado statutes and regulations?

Background

Company sells tangible personal property on which it collects state and local sales taxes. Customers occasionally do not tell Company at the time of the sale that they are exempt

from taxes or do not provide the appropriate exemption certificate. In some cases, customers will short pay an invoice by the amount of taxes due and provide Company with the appropriate exemption certificate, or will call Company's customer support centers, provide the exemption certificate, and request a refund of all applicable taxes. These requests are made either several months to several years after the sale. Company's current policy is to verify the accuracy of the certificate for the period and grant the refund (if the invoice was paid in full) or offset the refund against the current liabilities (in the case where Company already paid the taxes to the state and the customer short paid the invoice).

Company states that this process has created an undue administrative burden on Company, its customers, and state personnel. Company proposes the following procedure to alleviate the administrative burden.

1. Limit the time period in which the Company will issue a refund of taxes to 90 days from the date of the invoice.
2. If a customer fails to provide a certificate at the time of the sale, they are required to pay the invoice in full and provide the appropriate exemption certificate to Company.
3. Once the customer provides the Company with the certificate, Company will review the certificate to ensure it is applicable for the time period, and process the appropriate refund to the taxpayer and make the adjustment on the next tax return.
4. For tax refund requests outside of the 90 day period, Company will work with customer to complete the necessary department tax forms for claiming a tax refund and review the accuracy of the refund claim. Once completed, customer will file the refund request with the state.

Discussion

Company is correct that it must collect all applicable state-administered sales tax from purchasers who do not establish that they are entitled to an exemption at the time of the sale. In order to claim an exemption, purchaser must present retailer a copy of a valid Colorado sales tax license (to claim the sale for resale exemption), a Colorado exemption certificate (for charitable organizations, contractors, etc.), or an out-of-state sales tax license or exemption certificate at the time of sale. If the customer does not provide a copy of a current Colorado sales tax license or exemption certificate but only a Colorado sales tax license number or Colorado exemption certificate number, Company must verify the validity of the license or certificate. Company can verify the validity of the Colorado exemption number at www.Colorado.gov/revenue/tax > Online Services > Sales and Use Taxes > Other Services (Verify Sales Tax License). For more information about how retailers must document exempt sales tax transactions, see Department FYI Sales 1 "How to Document Sales to Retailers, Tax-Exempt Organizations and Direct Pay Permit Holders," which can be viewed at www.Colorado.gov/revenue/tax > Tax Library > FYIs > Sales.

Customers typically have two methods by which they can claim a refund. A vendor may refund to the customer the sales tax paid by customer and the vendor then claims the

overpayment of tax on line 3(c) of the sales tax return (DR 100) or, if there is insufficient tax due on the current sales tax return against which to claim the credit, file an amended sales tax return for the period in which the tax was paid, claim the exempt sale on line 2(b) of the return, and file a claim for refund on DR 0137. The overpayment must be claimed within certain time periods:

(a) Within three years after the due date of the return showing the overpayment or one year after the date of overpayment, whichever is later, a vendor shall file any claim for refund with the executive director of the department of revenue.

(b)(i) A vendor may claim a refund on behalf of any purchaser of the vendor if:

(A) The purchaser could timely file a claim for a refund on his or her own behalf; and

(B) The vendor establishes to the satisfaction of the executive director of the department of revenue that the amount claimed, including any interest payable pursuant to section 39-21-110, has been or will be actually be paid by the vendor to the purchaser.¹

Alternatively, Colorado law allows a purchaser to file a refund claim with the Department for a sales tax paid to a licensed vendor.

(c.5) The executive director of the department of revenue shall make a refund or allow a credit to any person who establishes that he or she has overpaid the tax due pursuant to this article [sales/use taxes].²

The refund claim is submitted on Department form DR 0137B "Claim for Tax Paid to Vendors".³ The Department asks that the purchaser first request a refund from the vendor before submitting the claim to the Department.

A purchaser cannot compel a vendor to file with the Department a claim for refund, including a claim for refund as an overpayment of tax on the sales tax return, on behalf of the purchaser.

No vendor shall be compelled by any party to file a refund claim pursuant to paragraph (b) of this subsection (2.5). It shall be a complete defense to any claim by a purchaser against a vendor for tax collected in error that the vendor has paid the tax over to the department of revenue. Any action by a purchaser for tax collected by a vendor in error that has been remitted to the department must be made pursuant to subsection (2) of this section and section 39-21-108.⁴

¹ 39-26-703(1)(2.5), C.R.S.

² 39-26-703(1)(c.5), C.R.S. You can view this statute on the Department's web site at www.colorado.gov/revenue/tax > Tax Library > statutes.

³ This form can be viewed and downloaded at www.Colorado.gov/revenue/tax > Forms > Sales.

⁴ 39-26-703(2)(c), C.R.S.

The procedure outlined in your letter, including the ninety day limitation, appears to be consistent with these statutes.

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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