

STATE OF COLORADO

DEPARTMENT OF REVENUE

State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
(303) 866-3091
FAX (303) 866-2400



GIL-2007-21

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

December 4, 2007

Re: refunds for completed sales transactions

Dear XXXXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated May 29, 2007, regarding refunds of sales tax for rescinded transactions.

Issue

Can a retailer and purchaser, after a purchase has been completed, rescind the purchase, request a tax refund, and resell the property to a leasing company, who then leases the property to the original purchaser?

Background

[Company] sells and services communications equipment and collects Colorado sales and use tax. Occasionally, a customer decides, after it has been billed, that it would like your company to redirect the bill a leasing company. You state that most leasing companies have exemption certificates. I assume that the leasing companies are presenting you with a retailer's sales tax license, not an exemption certificate. Presumably, the leasing company enters into a lease with the purchaser to lease the communications equipment and collects sales or use tax on the lease payments.

Discussion

Refunds allowed only if retailer would have allowed a refund in the absence of the agreement of the customer and leasing company to repurchase the equipment.

Sales tax is a tax on a transaction. Once the transaction is completed, the tax is due. Events which occur after the sale, such as destruction of the property or a buyer's subsequent decision to resale the property to another party, generally have no affect on the retailer's and purchaser's obligation to pay sales tax on the initial transaction. For this reason, the department generally does not allow parties to undo a completed transaction and claim a sales tax refund simply because they later decided to recast the transaction in a different form.

However, Colorado law allows a retailer to claim a sales tax refund (a credit against taxes paid) if the retailer issued the purchaser a full refund of the purchase price. See, §39-26-102(12), C.R.S. ("The taxpayer may take credit in this report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded whether in cash or by credit.").

In order to give effect of this refund statute, the department allows a refund if, at the time of the purchaser's request to redirect the bill to a leasing company, the retailer would have unconditionally accepted the return of the property and refunded the full purchase price to the purchaser. Unconditional acceptance, in this case, means that the retailer would have refunded the entire purchase price to the purchaser even if the purchaser had not asked that the bill be redirected to the leasing company.

If, however, the retailer would not have unconditionally refunded the full purchase price to the purchaser in the absence of the agreement to repurchase the equipment, then the retailer cannot claim a refund of the sales tax. For example, if, at the time the purchaser requests that the transaction be redirected to the leasing company, the retailer would have given only a partial refund of the purchase price (e.g., to reflect the diminished value of the property or use of the property by the purchaser), the retailer is not entitled to any refund of the sales tax paid on the initial sale.

The department will critically examine refund claims such as this. Among other things, the department will look to see whether the retailer had, at the time of the transaction, a written return policy that clearly sets forth the customer's right to a refund. The department will not look favorably on refunds claim where either the purchaser used the property more than incidentally prior to asking that the retailer redirect the bill to the leasing company or where there is a significant delay between the initial purchase and the request to redirect the bill. Compare, e.g., California Sales Tax Counsel Rulings No. 330.5160. The department will also critically examine claims for refunds for goods that are generally not returnable, such as custom-made goods or goods that the industry generally does not offer refunds, such as electronic equipment.

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

Steve Asbell
Taxpayer Service Division
Phone 303.866.3889
Email sasbell@spike.dor.state.co.us