



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

GIL-17-014

August 1, 2017

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Re: Security Systems and Related Services

Dear XXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance regarding the application of Colorado state and local sales taxes to various items arising from the sale and rental of security equipment and related services.

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, but 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 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issues

1. With respect to Company’s rental and sales of security systems and monitoring:
 - a. What items are subject to sales or use tax?
 - b. Does sales or use tax apply to rental contracts?
2. What are Company’s sales and use tax responsibilities with respect to Company’s sales, installation, and monitoring of security cameras and burglar and fire alarms systems?

Background

Company rents and/or sells security systems (video surveillance systems) and monitoring. The rental contracts Company provides for video surveillance systems are a 3 to 6 month contract and invoices customers for:

- a. Delivery and setup fee
- b. Equipment rental or sale
- c. Monitoring fee performed by a third party located outside Colorado.

The video surveillance systems are manufactured by Company at its location outside Colorado and are shipped to customers by Company using its own transportation service.

In addition, Company sells, installs, maintains, and monitors security cameras and burglar and fire alarms with related control systems. Company sells and installs these security systems in new buildings or in existing properties. Customers are either the owner or a general contractor. Company may, or may not, depending on the requirements of the customer, be engaged subsequent to the installation of the security systems for the maintenance of such systems. Company may, or may not, depending on the requirements of the customer, be engaged subsequent to the installation of the security systems for the monitoring of the security systems. Monitoring may be done from Company's location outside of Colorado.

Discussion

1. *Application of tax on charges relating to Company's sales of security systems (video surveillance) and monitoring.*

Colorado imposes sales tax on the sale of tangible personal property but generally not on services.¹ Company's rental and sale of security systems are tangible personal property. Sales and use taxes are calculated on the purchase price paid by the buyer. In general, the purchase price paid by the buyer does not include nontaxable services that are both separable from the sale of taxable goods and the price for such services are separately stated on an invoice.²

For example, shipping goods from the seller's place of business to the buyer is considered a service.³ The charge for that service is not included in the purchase price on which sales tax is calculated for taxable goods if the service charge is separable from the purchase of the taxable goods and the shipping charge is separately stated on the invoice.⁴ The purchase of a service is considered separable from the purchase of goods if the buyer has the option not to purchase the service when purchasing the taxable goods. Conversely, if the seller requires the buyer to purchase shipping services from the seller, then the sale is not separable and the shipping charge is considered part of the purchase price paid for the taxable goods, even if the seller separately states the charge for shipping on the invoice.

¹ § 39-26-104(1), C.R.S.

² *AD Stores v. Department of Revenue*, 19 P3d 680 (Colo. 2001); GIL 09-004

³ Department Special Regulation 1 CCR 201-5, SR 18.

⁴ *Ibid.*

This same analysis applies to charges for the services of installation and monitoring.

We note that the equipment at issue may be installed into real property. There are special tax rules governing the sale of construction and building materials. In general, a contractor purchasing the equipment for installation that uses a lump sum contract is treated as the consumer of the construction and building materials and must pay sales tax to the supplier when the contractor purchases the material. Contractors using a time-and-material contract will generally be treated as a reseller of the construction and building materials and may purchase, as a sale for resale, items from the supplier without paying tax, but the contractor must collect tax when the contractor sells the items to their client.

Construction and building materials are those items of tangible personal property that are incorporated into a real property structure so as to lose their identity as personal property and become an integral part of real property and cannot be removed without substantial injury to the structure. We cannot, in the context of this general information letter, determine whether the surveillance system, video cameras, burglar and fire alarms systems, and related equipment qualify as construction and building material. In GIL 15-011 and GIL 17-001, the Department offered guidance that audio / visual equipment sold by a retailer to a contractor may not qualify as construction and building material. That guidance applies here.

If the equipment Company sells does not qualify as construction and building materials, then the contractor will either be treated as the consumer of the materials if it consumes the material to perform construction services (e.g., construction tools) and, therefore, must pay sales tax when the item is purchased from the supplier, or as a reseller of non-construction materials to the owner (e.g., detached furniture) and may purchase the item from the supplier as a wholesale purchase for resale and must collect tax from the contractor's client.

2. Application of sales or use tax to rental contracts.

Colorado distinguishes between short term rental contracts and long term rental contracts for purposes of sales and use taxes. Short term rental contracts are contracts that are three years or less in duration.⁵ A lessor using a short term lease must pay sales or use tax when it acquires the property (or when it acquires the parts⁶ for such equipment if the equipment is manufactured by Company) and does not collect tax on lease payments from the lessee. However, the lessor may request permission from the Department to purchase the short term leased property exempt from sales or use tax and, instead, collect sales tax on the lessee's rental payments.⁷ Company's rental contracts for video surveillance

⁵ § 39-26-713(1)(a), C.R.S.

⁶ Because a lessor of a short term lease is treated as the consumer of the leased goods, tax is computed on the price lessor pays to acquire the goods. If the lessor is the manufacturer of the leased goods, then the price on which the lessor pays tax is the price of the tangible personal property and not on the price at which the finished goods are sold. *International Business Machine v. Charnes*, 601 P.2d 622 (Colo. 1979)

⁷ See, footnote 5.

appear to be three years or less in duration and, therefore, are subject to these rules for short term leases.

If Company elects to collect tax on the lease payments and separately states the price for delivery, setup, equipment rental, and monitoring in the lease agreement, then whether these separately stated charges are included in the lease of the equipment will depend on whether these charges are optional, as discussed above. If Company does not elect to collect tax on lease payments and pays tax on the leased property (or on the parts for such equipment if the equipment is manufactured by Company) when it acquires it from suppliers, then the fees for delivery, installation, and monitoring are not subject to tax even if they are not optional or separately stated.

3. Application of sales and use tax on charges for sales, installation, maintenance, and monitoring of security cameras and burglar and fire alarms and related control systems.

The application of sales and use taxes for the sale, installation, maintenance, and monitoring of video cameras, burglar and fire alarms, and related control systems is the same as discussed in questions 1 and 2 above.

We note that this question also involves maintenance agreements. In general, charges for maintenance are excluded from the purchase price for taxable goods if the purchase of the maintenance agreement is optional and the charge for the maintenance agreement is separately stated.⁸ If the purchase of the maintenance agreement is optional but the charge is not separately stated, the purchase price on which tax is calculated must include the charge for the maintenance agreement. Seller has the option to request permission from the Department to apportion the tax over a portion of the maintenance charge and exclude such charge from the purchase price on which tax is calculated.⁹

In general, parts provided by the seller to replace or repair worn or broken parts pursuant to a maintenance agreement are treated as items consumed by the company providing the warranty or maintenance and the company owes sales or use tax when it acquires the parts from suppliers. However, a company will not pay sales tax to the suppliers if the charge for the maintenance agreement is subject to tax and the price for the parts is not separately stated.¹⁰

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

⁸ See, Department FYI Sales 70 "Warranties and Maintenance Agreements"

⁹ § 39-26-105(4), C.R.S.

¹⁰ See, e.g., Department Private Letter Ruling PLR-12-003

administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/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 Tillquist
Colorado Department of Revenue
Office of Tax Policy & Analysis