

STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-12-007

April 5, 2012

XXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Transportation Charges

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for guidance on the application of sales tax to transportation charges.

The 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.

Background

Company is a business-to-business reseller and does not manufacture or stock inventory at its business location in Colorado. It does not have its own transportation services or make arrangements for transportation services. In most instances, orders made by customers through Company are drop shipped directly from manufacturer to the customer. In limited instances, products are shipped to Company for hand-delivery to customers, although Company does not charge a fee for this service. Company does not offer its customers the option to choose alternative transportation methods. Company includes transportation

charges as a separate line item on each invoice. Company asks whether these transportation charges are subject to sales tax.

Discussion

Colorado generally does not levy sales tax on the sale of services. Transportation of tangible personal property between a retailer and a purchaser is generally considered a service and, thus, is not subject to sales tax. Special Regulation 18 (SR 18), "Transportation Charges."¹ Transportation charges are not taxable if they are both (1) separable from the sales transaction and (2) stated separately on a written invoice or contract.

In order for a charge to be "separable" from the sales transaction, the transportation service must be provided after the taxable property is offered for sale and the seller must allow the purchaser to use either the seller's transportation services or an alternative transportation service. See, SR 18(b). In the case of a "drop shipment," where the seller contracts with a supplier to ship goods from supplier's warehouse directly to customer, the Department applies the "separable" test to the charges of the supplier, which are then charged by the seller to the customer. In our view, this is no different than had Company charged for delivery directly from its place of business. Other states follow a similar approach, where transportation charges incurred in drop-shipment scenarios are not taxable if they are "separable" from the sales transaction. See, Massachusetts Sales and Use Tax Explanation 21240.

It appears in this instance that the transportation charges are not separable from the transaction because Company does not specifically allow the purchaser the option to choose between alternative transportation services. That is, the customer cannot purchase Company's goods without also purchasing transportation services. In such cases, the sales tax is applied to the entire charge, including the delivery charge.

The charges must also be stated separately on a written invoice or contract. SR 18(c).

Stating the charges as a separate line item on an invoice meets this requirement. However, stating the charges separately does not, by itself, make the transportation charges separable from the sales transaction. The charges must be actually separable from the transaction, as discussed above, for the sales tax exemption to apply. Although Company meets this requirement by stating the charges on a separate line item on the sales invoice, the charges are not exempt from sales tax because they are not separable from the sales transaction.

Company states that, in limited instances, orders are shipped from a manufacturer to the Company for later hand-delivery to the customer. Company does not charge a fee for this service. However, we assume that Company does pass on to the customer the charges incurred on the initial shipment from the manufacturer to the Company. These charges are best classified as freight-in charges, which are included in the sales tax calculation. See, SR 18(d).

¹ You can view this Regulation on the Department's web site at www.colorado.gov/revenue/tax >Tax Library > Rules and Regulations > Final Tax Regulations > Sales and Use Tax > SR 18.

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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