



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

PLR-14-004

June 17, 2014

XXXXXXXXXXXXXXXXXX

Attn: XXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

Re: Private Letter Ruling

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Department Rule 24-35-103.5. This letter is the Department's private letter ruling.

Issues

Are Company's "Delivery" and "Pick-up" charges subject to Colorado sales or use tax?

Conclusions

Company's "Delivery" and "Pick-up" charges are not subject to Colorado sales and use tax because the charges are separable from the rental of the equipment.

Background

Company is a construction equipment rental company that has several brick and mortar locations in Colorado. When customers rent construction equipment from Company, they have the option either to pick up the equipment themselves from one of the store locations or to have Company or a third party deliver the equipment to a location prescribed by the customer. Customers have the same choice when returning the equipment.

Although Company gives customers the option to use transportation services of their choice, Company rents many types of equipment that are not practical for the customer to pick up or return. This is because the weight or size of the equipment requires certain delivery equipment (flatbeds, trailers, etc) and, at times, CDL licenses. Because the cost to hire a third party to transport the equipment can be much higher than the price Company charges, the vast majority of Company's customers request Company deliver and pick up the equipment from the customer's job sites.

When a customer chooses to have Company deliver or pick up the equipment, a "Delivery" or "Pick-up" charge is added on the customer's invoice. The charge is separately stated on the invoice to demonstrate clearly that the customer is paying for such service.

Discussion

Transportation of tangible personal property between a retailer and a purchaser is generally considered a non-taxable service. The transportation charge must be both (1) separable from the sale, and (2) separately stated on the invoice to not be subject to tax.¹ Transportation charges are "separable" from the sale of taxable property if they are performed after the taxable property or service is offered for sale and the seller allows the purchaser the option to either use the seller's transportation services or use an alternative transportation service. The fact that a transportation charge is separately stated on the invoice does not, itself, mean the charge is separable.² For example, if a purchaser has no realistic option but to use the transportation services of the seller, then the transportation charge is not separable and is taxable.³

Your inquiry raises the question of whether the buyer has a "realistic" option to acquire transportation services from someone other than the retailer for certain equipment. If Company is the only realistic transportation option for customers to obtain certain equipment of Company's, the Department would not treat those transactions as separable. Company represents that its price for transportation service is somewhat lower than the price charged by other transportation service companies, that its price does not recover the full cost of its transportation service, and that the portion of its transportation service cost not recovered in the transportation service price is recovered in the rental price for the equipment. Company further represents that there is an existing market for this transportation service without the requirement that someone rent equipment to obtain such service, and that there are stand-alone companies that provide such transportation services, but that Company can, because it has shifted some of its transportation price to the rental price, offer its transportation services at a lower price. Under these circumstances, a customer does have a realistic option to use an alternative transportation service and, thus, the customer is not required to use Company's transportation services. Therefore, the Department will treat Company's "Delivery" and "Pick-up" charges as separable from the rental of the equipment and not subject to **tax**.

Miscellaneous

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit

Department Special Rule 18, Transportation Charges.

² **Ibid.**

³ Department general information letter GIL-11-00.7.

our web site at www.colorado.gov/revenue/tax for more information about state and local sales taxes.

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. This ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling 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 version of the ruling.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue