



COLORADO  
Department of Revenue

# STATE OF COLORADO

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John Hickenlooper  
Governor

Barbara J. Brohl  
Executive Director

GIL-16-014

August 5, 2016

XXXXXXXXXXXXXXXXXXXX  
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Re: Energy for TV News Broadcast Station

Dear XXXXXXXXXXXXX,

You submitted a request for guidance regarding the taxability of a energy services used by a business (“Company”) for producing and broadcasting TV programs.

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 fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

### Issue

Is the sale of energy to a company that produces and transmits TV broadcasts exempt from sales tax?

### Background

Company operates a TV news station that pays sales tax on the electricity and natural gas used to operate the TV station. The energy is used to operate a transmitter to broadcast TV programing, as well as cameras, lighting, editing, and control room equipment integral to the

production of the TV news broadcast. Office space within the studio is used by producers and editors using computers and other office equipment to produce and research content for the broadcast. In addition, natural gas is used for heating and to power a generator.

### Structure of Analysis

To determine whether the energy is subject to tax, the Department will examine the following questions:

1. Is the provisioning of electricity and natural gas a taxable service under §39-26-104(1)(d.1), C.R.S.?
  1. Does the purchase of electricity and natural gas for TV broadcasting fall within the exemption for energy consumed as set forth in §39-26-102(21), C.R.S.?

### Discussion

Colorado imposes sales tax on the sale of electricity and natural gas used for commercial consumption.<sup>1</sup> However, Colorado exempts sales of electricity and natural gas used for “processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses ...”.<sup>2</sup> There are two terms in this list of exempt activities that arguably apply to Company.

First, the exemption applies to energy used for “radio communication.” This exemption was enacted in 1937, which was at a time when TV broadcasting did not exist.<sup>3</sup> The question then is whether radio communication should be interpreted today to include TV broadcasting. This is a close question, but we tend to think the better answer is that it does. Radio communication, at least in 1937, and TV broadcast communication both use electromagnetic waves (often referred to as radio waves) to transmit data.<sup>4</sup> The only difference is that TV broadcast, in the circumstances you describe, uses more complex radio waves to transmit data for sound and images. This distinction seems immaterial. What is most relevant is that both use communication using radio waves.

We acknowledge that the legislature could not have addressed TV broadcast in 1937 because TV only came into widespread use in the 1950s. However, we understand radio communication to refer to radio transmissions rather than to a “radio.” The fact that the radio signals are now more complex to include TV broadcast does not mean that the communication is anything other than radio signal. Moreover, TV broadcasts are “communication.” This view is consistent with a position taken by the Department in 1999 that electricity used to operate TV communication towers is exempt because TV broadcast uses radio communication to transmit the TV signal. Even if the statute were understood to refer to the subject of “radio” rather than radio transmission, our view would still be consistent with the longstanding principle of statutory construction that a statute written in general terms applies to subjects or activities that come into existence after adoption of the statute, including those which could not have been anticipated when the statute was enacted.<sup>5</sup>

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<sup>1</sup> § 39-26-104(1)(d.1), C.R.S.

<sup>2</sup> § 39-26-102(21), C.R.S.

<sup>3</sup> TV broadcasting first began in the 1950s.

<sup>4</sup> LiveScience, “What are Radio Waves”. <http://www.livescience.com/50399-radio-waves.html>.

<sup>5</sup> *AT & T Communications of the Mountain States, Inc. v. State of Colorado, Department of Revenue*, 778 P2d 677 CO 1989).

In order to fall within this exemption for radio communication, the energy must be used for “communication.” We note that exemption statutes are narrowly, rather than liberally, construed and the taxpayer has the burden of proving that the facts clearly fall within the exemption.<sup>6</sup> Energy for powering the TV transmitter appears to fall within radio communication exemption. In order to claim the exemption, Company should prepare Department sales tax form DR 1666. However, office lighting, computers, printers, cameras, stage lighting and heating of office space do not clearly qualify as radio communication and, therefore, energy for such use is not exempt as radio communication.

The other term in this list of exempt uses that arguably applies is “industrial” use. There is no statutory definition of “industrial” use. There is also no definition of “commercial” use, as this term is used to identify taxable uses of energy in §39-26-104(1)(d.1), C.R.S. In the absence of statutory definitions, we generally look to the common meaning of terms. In general, “industrial” means the business of producing of goods.<sup>7</sup> “Commercial” is a broader term and refers to business activities intended to produce a profit. For example, energy for lighting commercial office space is considered a commercial use but is not an industrial use because office lighting is not producing a product. The question, then, is whether energy used for production of TV broadcast, as well as office support, is an industrial use.

We think defining industrial use to include energy used for office computers, printers, office lighting, and heating is not appropriate because these uses do not produce a product. Moreover, if we were to expand the definition of industrial use to include these uses, it is doubtful that there would be any meaningful distinction between exempt industrial and taxable commercial uses.

For the same reason, we think that energy for TV cameras, lighting, and heating for the TV stage are not industrial uses. TV broadcasting is commonly understood to be a service rather than the production of a product. We note that this view is consistent with the national classification of businesses, which classifies TV broadcasting with other commercial activities that are generally considered services.<sup>8</sup> Finally, exemptions must be narrowly interpreted and do not apply unless the facts clearly fall within an exemption.<sup>9</sup>

### **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

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<sup>6</sup> *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225, 226 (1972).

<sup>7</sup> See, e.g., GIL 14-009. Merriam Webster Dictionary, “Industry” - “the process of making products by machinery and factories.”; “Commerce” - “relating to or used in the process of buying and selling of goods and services.”

<sup>8</sup> The United States Census Bureau, North American Industry Classification (NAIC) code for TV broadcasting stations is 5151, which is grouped with businesses that provide “Information”, such as publishing, all of which are commonly viewed as providing a service rather than producing goods. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=5151&search=2007%20NAICS%20Search>.

<sup>9</sup> *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225, 226 (1972).

about the applicability of those taxes. Visit our web site at [www.colorado.gov/tax](http://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