COLORADO
Department of Revenue
Taxation Division

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PLR 21-004

July 12, 2021

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Re: Applicability of Sales and Use to the Acquisition and Leasing of Cranes and Hoists

Dear XXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXX ("Company"), regarding the applicability of sales and use tax to the acquisition and leasing of cranes and hoists, to the Colorado Department of Revenue ("Department") pursuant to 1 CCR 201-1, Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Is Company required to collect state and state-administered local sales taxes on the provision of cranes and hoists with a Company operator?

2. When it provides cranes and hoists without a Company operator, may Company request permission to acquire the cranes and hoists tax free and collect sales tax pursuant to section 39-26-713(1)(a), C.R.S.?

3. If Company is required to pay sales or use tax when it acquires equipment, is Company required to pay sales or use tax when it transfers equipment to Colorado from another state on a temporary or permanent basis?

4. If Company is required to collect sales tax on the provision of cranes and hoists, should Company collect sales tax on separately stated charges for optional related services?

Conclusions

1. Company is not required to collect state and state-administered local sales taxes on the provision of cranes and hoists with a Company operator.

2. Company cannot receive permission to collect sales tax under section 39-26-713(1)(a), C.R.S., because Company cannot satisfy the regulatory requirements for such permission. Therefore, Company must pay sales or use tax upon its acquisition of cranes and hoists.

3. Company must pay use tax when it uses or stores equipment in Colorado that was purchased in another state. Company may take a credit, up to the amount of use tax due, for similar tax paid to another state. There is no reduction of or exemption from the tax based upon the amount of time the equipment is used or stored in Colorado.

4. Although company will not be collecting sales tax on the provision of cranes and hoists, the optional related services would not be part of the taxable purchase price if Company was required to collect.

Background[1]

Company is headquartered outside Colorado. It does business throughout the United States. Company's principal business is renting tower cranes, mobile cranes, and construction hoists (collectively referred to as "Equipment"), both with and without operators, and providing related services. Mobile cranes are provided for a variety of time periods from a few hours up to more than a year.[2] Tower cranes and hoists are typically provided for a duration of six to eighteen months. Company's customers are usually general contractors and, in some cases, subcontractors.

In addition to offering an operator, Company offers the following related services (collectively referred to as the "Related Services"): (1) engineering (through a third-party professional engineer) related to the Equipment foundation and any connections to a building, (2) transporting the Equipment to and from the jobsite, and (3) erecting and dismantling the Equipment. In some cases, Company provides Related Services even when it does not provide any Equipment. Company bids and invoices each of the Related Services as discrete line items. They are separately itemized on invoices when provided, and customers have the option of self-performing (or having third-parties perform) them.

Company does not itself perform improvements on land or buildings and is not a licensed contractor in Colorado, although it is licensed as a contractor in other states. However, Company's services at the jobsite are substantial and integral and directly support building improvements.

Company frequently transfers Equipment between its headquarters state and its facility in Colorado. In some cases, it has already paid tax upon the purchase of the Equipment before transferring it to Colorado. In some cases, Equipment is transferred to Colorado for only one job, often for less than one year.

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[1] This section generally recites the statements of fact set forth in the request as required by paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5. The recitation of particular facts in this section is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be redacted as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

[2] Company confirmed that it does not lease Equipment for more than three years.

Discussion

Colorado imposes a sales tax on the price paid or charged on all sales of tangible personal property, and the sale of certain services, at retail.[3] Leases of three years or less are exempt from sales tax if the lessor has paid to the state of Colorado a sales or use tax on the leased property upon its acquisition.[4]

Under certain circumstances, however, a lessor of tangible personal property for three years or less may request permission from the Department to acquire such property without paying sales or use tax and to collect tax on lease payments from lessees of that property instead.[5] A person seeking such permission may not alternate between paying sales or use tax itself on some of its leased property and collecting tax from lessees in others.[6] On the facts presented, Company cannot satisfy this requirement, and therefore, cannot receive permission to acquire the Equipment without paying the applicable sales or use tax.[7]

Relevant to the facts Company presents, a Department regulation specifies that where an operator of a vehicle leases both the vehicle and themselves for hire, the transaction is not considered a lease of the property.[8] Instead, it is the rendering of a service. A mobile crane is a vehicle. When Company provides mobile cranes with Company operators, therefore, it is not considered to be leasing that mobile crane but providing a service. Company, as the entity providing that service, is the user or consumer of mobile cranes (when it provides an operator for the mobile cranes).[9] There would be no lessee from whom sales or use tax could be collected on some of the mobile crane transactions. Therefore, providing Company with an exemption under section 39-26-713(1)(a), C.R.S., would be inconsistent with the requirements of that provision because it is premised on the lessor collecting sales tax on the lease payments from the lessee.

Because Company must pay sales or use tax on the purchase price of mobile cranes (some of which would be considered leased and others considered used by Company to provide a service in Company's operations, depending on the facts of a given transaction), Company cannot receive permission under section 39-26-713(1)(a), C.R.S., to purchase the remaining Equipment without paying applicable sales or use taxes in exchange for collecting sales tax on the lease payments Company receives. Doing so would violate the requirement that all leased property be treated the same.[10] Therefore, Company must pay sales or use tax on the remaining Equipment regardless of the fact that it will lease the Equipment for a period of three years or less.[11]

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[3] § 39-26-104, C.R.S.
[4] § 39-26-713(1)(a), C.R.S.
[5] 1 CCR 201-4, Rule 39-26-713-1.
[6] 1 CCR 201-4, Rule 39-26-713-1.
[7] 1 CCR 201-5, Special Rule 40; *see also* § 39-26-104(1), C.R.S. (imposing a sales tax upon "all sales and purchases of tangible personal property at retail").
[8] 1 CCR 201-4, Rule 39-26-102(23).
[9] *See* § 1 CCR 201-5, Special Rule 40 (addressing property used by service providers); *see also* § 39-26-104(1), C.R.S. (imposing a sales tax upon "all sales and purchases of tangible personal property at retail").
[10] 1 CCR 201-4, Rule 39-26-713-1.
[11] § 39-26-713(1)(a).

Company has also asked whether, if it is required to pay sales or use tax when it acquires equipment, it must pay sales or use tax when it transfers equipment to Colorado from another state on a temporary or permanent basis. Company must pay use tax when it uses or stores equipment in Colorado that it has purchased in another state. Colorado imposes a use tax upon the storage, use, or consumption in this state of any tangible personal property purchased at retail.[12] The terms "use" and "storage" broadly encompass any exercise of control over tangible personal property in this state, however temporary.[13] However, Company may take a credit, up to the amount of use tax due, for similar tax paid to another state on account of Company's use or storage of equipment there.[14] There is no reduction of or exemption from the tax based upon the amount of time the equipment is used or stored in the state.[15]

Finally, although Company will not be collecting state or state-administered local sales taxes on any of its sales, the Related Services would not be subject to tax on the facts presented. Only certain services specifically listed in the statute are subject to tax.[16] However, the price of an otherwise non-taxable service will be included in the taxable purchase price unless the service is truly separable from the taxable part of the transaction.[17] Furthermore, the price of the separable service must be separately stated from the taxable purchase price.[18]

Company represented that the Related Services are optional, and may be performed by the customer or by third-parties hired by the customer. Indeed, Company stated that, in some cases, Related Services are performed without the provision of any Company Equipment. Therefore, we conclude that the Related Services are separable from the provision of the Equipment. Company also stated that charges for Related Services are invoiced separately as discrete line items, which would suffice to exclude them from the taxable price of the Equipment. Because of this separate statement of the separable charges for Related Services, the charges are not subject to tax.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts, and that all representations are true and complete, and Company has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Company's facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department and is subject to modification or revocation, in accordance to 1 CCR 201-1, Rule 24-35-103.5.

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[12] § 39-26-202(1)(b), C.R.S.
[13] *See* § 39-26-201(3), C.R.S.; *see also* 1 CCR 201-4, Rule 39-26-202(3).
[14] § 39-26-713(2)(f), C.R.S.
[15] Part 7 of article 26 of title 39, C.R.S., provides a number of temporary storage exemptions, none of which are applicable in this case. *See, e.g.*, § 39-26-712(2) (exempting certain trucking equipment if it is removed from the state within 30 days of delivery); § 39-26-713(2)(j) (exempting property acquired for manufacturing outside of Colorado that is in Colorado for no more than 90 days for test, modification, or inspection).
[16] *See* § 39-26-104, C.R.S. (taxing "all sales and purchases of tangible personal property at retail," but listing only certain services). *A.D. Store Co. Inc., v. Exec. Dir. Dept. of Revenue*, 19 P.3d 680, 683 (Colo. 2001).
[17] 1 CCR 201-4, Rules 39-26-102(7)(a) and 39-26-102(12). *See also* 19 P.3d at 684.
[18] 1 CCR 201-4, Rules 39-26-102(7)(a) and 39-26-102(12).

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities and home-rule counties. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at tax.colorado.gov for more information about state and local sales taxes.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.