



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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PLR 23-007

November 29, 2023

XXXXXXXXXX
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Via Electronic Mail: XXXXXXXXXXX

Re: Taxability of Delivery Fee

Dear XXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXX (the "Company"), to the Colorado Department of Revenue (the "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.

Issue

Whether Company's "XXXXXXXX" fee ("Delivery Fee") is subject to state sales or use tax.

Conclusion

Company's Delivery Fee is not subject to state sales or use tax.

Background¹

Company is a national retail seller of used motor vehicles. Sales are made via Company's website. Prospective customers can perform research to identify a vehicle of interest, visually inspect the vehicle, obtain financing and warranty coverage, purchase the vehicle, and schedule a time and location for delivery or pick-up of the vehicle.

Company holds its vehicle inventory at various inspection centers across the United States. XXXXXXXX. In order for a vehicle to arrive at a delivery hub or pick-up location, Company will ship the vehicle from an inspection center to the nearest delivery hub or pick-up location after the customer purchases the car online. XXXXXXXX.

When purchasing a vehicle, a customer may be charged for two distinct transportation related fees. The shipping fee, which is listed as "XXXXXXXX" on the retail purchase agreement ("Shipping Fee"), is charged for transporting the vehicle from an inspection center to the nearest delivery hub or pick-up location in relation to the customer and is not optional. The Delivery Fee, which is listed as

¹ Paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5 requires the request for a private letter ruling to include a statement of facts. This section generally recites the statement of facts provided in the request, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be omitted to ensure confidentiality 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.

"XXXXXXXXXX" on the retail purchase agreement, is incurred for delivering the vehicle from a Colorado delivery location to the customer's location of choice. The customer has the option to waive the Delivery Fee and instead pick up their vehicle at any of Company's pick-up locations. In fact, many customers do opt to pick up their vehicles.

XXXXXXXXXX.

The website will list any Shipping Fee that will be included on the retail purchase agreement. This fee is based on the distance from the inspection center to the local market (delivery hub or pickup location). XXXXXXXXXX. The customer does not have control over this fee. Company treats the Shipping Fee as taxable.

Once a vehicle is chosen, the customer is prompted to begin the purchase process by entering their personal details, followed by trade-in information, if applicable, then their cash or financing option. Once this is completed, the customer then decides if they want to pick up their vehicle or have it delivered. If the customer chooses delivery, the Delivery Fee is added to the purchase and will be displayed separately on the retail purchase agreement. XXXXXXXXXX.

The separately stated price of the vehicle has no bearing on what Company charges for either the Shipping Fee or Delivery Fee, and neither of these fees is calculated based on insurance. The Delivery Fee is added on at the end of the customer's purchase and has no relation to the Shipping Fee XXXXXXXXXX. The Shipping Fee and Delivery Fee are always represented as two different line items on the retail purchase agreement.

XXXXXXXXXX.

Lastly, Company gives customers the choice to modify their optional delivery up to the point of delivery. For example, if a customer decides to pick-up the vehicle rather than have it delivered a day before their scheduled delivery date, Company will roll-back their purchase agreement, remove the Delivery Fee from the retail purchase agreement and allow the customer to have the pickup experience. If a vehicle with a Shipping Fee was chosen, that fee will remain on their retail purchase agreement. A customer can change their delivery or pick-up option or reschedule delivery or pick-up at any time.

Discussion

Colorado imposes a sales tax on retail sales of tangible personal property.² Colorado does not generally impose a sales tax on services, except for certain services specifically included in statute.³ However, services that are otherwise excluded from sales tax may be taxable if they are provided as part of a mixed transaction that also includes the sale of tangible personal property or taxable services.⁴

The transportation of tangible personal property between a retailer and purchaser is generally a service not subject to sales tax if the service is separable from the sales transaction and the charge for the service is stated separately on a written invoice or contract.⁵ A service is generally "separable" when the nature of the service remains the same whether contracted for at the time of purchase or at a later date, and when the service can be contracted for at the initial purchase or at a later time.⁶ In particular, charges for transportation services are separable from the sales transaction if the services are performed after the taxable property or service is offered for sale, and the seller allows the purchaser the option to use either the seller's transportation services or alternative transportation services.⁷ Charges for transportation

² Section 39-26-104(1), C.R.S.

³ *A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 19 P.3d 680 (Colo. 2001)

⁴ See 1 CCR 201-4, Rule 39-26-102(7)(a); 1 CCR 201-4, Rule 39-26-102(12); *A.D. Store*, 19 P.3d at 683-84.

⁵ Paragraph (1) of 1 CCR 201-5, Special Rule 18.

⁶ *A.D. Store*, 19 P.3d at 684. See also paragraph (1)(b) of 1 CCR 201-5, Special Rule 18.

⁷ Paragraph (1)(b) of 1 CCR 201-5, Special Rule 18.

services are “separately stated” if they are listed separately in a written sales contract, retailer’s invoice, or other written document issued in connection with the sale.⁸

Company makes retail sales of motor vehicles via Company’s website. A purchaser obtains the motor vehicle from Company by either picking up the motor vehicle at one of Company’s locations or by requesting delivery of the motor vehicle to the purchaser’s location. If the purchaser chooses delivery of the motor vehicle to the purchaser’s location, Company charges a Delivery Fee.

First, Company’s Delivery Fee is separable from the sale of the motor vehicle because the attendant delivery is performed after the taxable property is offered for sale and the delivery is optional. Second, Company’s Delivery Fee is separately stated because it is set forth separately in the written retail purchase agreement issued in connection with the motor vehicle sale. Because the delivery service is separable and the charge for the delivery service is separately stated, Company’s Delivery Fee is not subject to state sales or use tax.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts, that all representations are true and complete, and that 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 with 1 CCR 201-1, Rule 24-35-103.5.

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. 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.

Thank you for your request.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

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

⁸ Paragraph (1)(c) of 1 CCR 201-5, Special Rule 18; Paragraph (1)(c)(i)(C) of 1 CCR 201-4, Rule 39-26-102(1.3).