



COLORADO
Department of Revenue
Taxation Division

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GIL-17-001

January 24, 2017

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Re: Taxability of Audio / Visual Equipment

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for guidance on whether Company must collect sales tax if a construction contractor presents Company with a contractor's exemption certificate.

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

Issue

Is Company required to collect state sales and use tax on the sale of audio/visual equipment to a construction contractor who presents Company with a contractor's exemption certificate?

Background

Company sells and installs audio/visual equipment to a wide variety of customers, including contractors engaged in construction for exempt entities, such as governmental entities, charitable entities, and schools. Contractors typically present a contractor's exemption certificate to the Company.

Structure of Analysis

To determine whether Company has an obligation to collect Colorado sales and use tax for sales of audio/visual equipment, the Department will examine the following question:

1. Has Company, as a retailer, exercised reasonable care in determining whether the sale to the contractor is exempt pursuant to §39-26-704, C.R.S.?

Discussion

Colorado requires a retailer to collect sales or retailer's use tax on sales, unless the transaction is exempt.¹ A retailer has an obligation to exercise reasonable care to determine whether a transaction is exempt.² In general, a retailer discharges this obligation if the buyer presents the retailer with a valid contractor's exemption certificate (Form 0163) or sales tax license.

In GIL-15-011, the Department discussed the special tax rules applicable to contractors and how those rules apply to a contractor who purchases audio/visual equipment. In general, audio / visual equipment does not qualify as "construction and building material" (and, therefore, does not fall under the special rules for contractors and lump sum / time-and-material contracts) unless the equipment is built into the structure so as to become an integral part of the structure and cannot be removed without substantial damage to the existing structure. However, if the contractor is engaged by an exempt entity, the contractor can purchase the equipment exempt of tax, regardless of whether the equipment is construction material. To claim that exemption, the contractor must present a valid exemption certificate.

Although it is more technically correct for the contractor to present a sales tax license if the audio / visual equipment is not construction or building material, the practical answer for an audio/visual equipment retailer selling to contractor engaged by an exempt entity is that the retailer can accept either the contractor's exemption certificate or the contractor's sales tax license because, whether the contractor is treated as the consumer or a reseller, the sale by the retailer is exempt.

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/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

¹ § 39-26-105(1), C.R.S.

² § 39-26-105(3), C.R.S. See, also, Department FYI Sales (1) "How to Document Sales to Retailers, Tax-Exempt Organizations and Direct Pay Permit Holders"

know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue
Office of Tax Policy Analysis