



**COLORADO**  
Department of Revenue

Taxation Division  
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PLR-15-004

January 30, 2015

XXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Cc: XXXXXXXXXXXXXXXXXXXX

Re: Bulk Water

Dear XXXXXXXXXXXXX,

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.

**Issue**

Are bulk water sales subject to Colorado sales or use tax?

**Conclusion**

Bulk water sales sold in tanks are subject to Colorado sales or use taxes, but sales of water through a pipeline is not subject to Colorado sales and use taxes.

**Background**

Company owns water rights and operates a water well in Colorado. Company sells water in bulk to unrelated parties primarily in the oil and gas industry for use in hydraulic fracturing. The water is sold through an automated pump system that is owned by Company. Customers obtain the water by one of two methods. In the first method, customers fill tanker trucks with water from a pipe at the wellhead pump station. In the second method, customers take delivery of the water from a pipeline that the customer owns and operates and that connects to Company's system at the automated pumping station. Under both methods, the sale takes place at the automated pumping station where the Company passes title and possession to the customer or customer's agent. Once water is pumped, the customer bears the risk of loss. The customer is billed monthly based on the amount of water purchased, which is tracked by the automated pump system. In certain circumstances, customers hire a third party to transport the water by tanker truck from the automated pumping station

to the customer rather than use the customer's own tanker trucks. Neither the customer nor the delivery company is related to Company.

### Discussion

Colorado levies sales and use tax on the sale or use of tangible personal property.<sup>1</sup> Tangible personal property is statutorily defined as "corporeal personal property."<sup>2</sup> Corporeal is typically defined as that which is of physical, tangible, or material nature.<sup>3</sup> Water is corporeal personal property because it is physical, tangible, and material in nature, and is a commodity that is capable of being possessed and exchanged. However, water has also been historically viewed as part of real property in some situations. Department Regulation 26-102.15 describes this dual nature of water:

embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, capable of being possessed and exchanged, except newspapers excluded by the law...

...Property severed from real estate becomes tangible personal property...

...The term also does not include water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.<sup>4</sup>

It is clear under this regulation that the sale of water in "wagons, tanks, or other containers" constitutes the sale of taxable tangible personal property. Therefore, sales of water that are obtained by tanker truck, whether owned by Company, customer, or a third-party, is subject to sales tax.

The question of whether water sold to a customer that owns and operates a pipeline from Company's facilities is more difficult. Department Regulation 26-102.15 states, "[t]he term [tangible personal property] also does not include water in pipes, conduits, ditches or reservoirs." This rule has its strongest footing when the seller or common carrier owns the pipeline and the title to the water passes to the customer when delivered at the end of the pipe. In the case before us, title to the water passes at the wellhead once it enters into the customer's pipes and into the customer's possession and control. In the absence of this regulation, we would be inclined to conclude that the sale is taxable. However, the regulation does not make the distinction we describe here and, therefore, we conclude that the sale of the water is not subject to tax.

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<sup>1</sup> §§39-26-104(1)(a) and 202, C.R.S.

<sup>2</sup> §39-26-102(15), C.R.S.

<sup>3</sup> Merriam-Webster Desk Dictionary (1995); American Heritage College Dictionary, 3<sup>rd</sup> Ed. 1993; Black's Law Dictionary, Eighth Edition.

<sup>4</sup> Department Regulation 1 CCR 201-4, 26-102.15

## 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 our web site at [www.colorado.gov/tax](http://www.colorado.gov/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,

Neil L. Tillquist  
Colorado Department of Revenue