

# STATE OF COLORADO

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**DEPARTMENT OF REVENUE**

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Bill Ritter, Jr.  
Governor

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Executive Director

GIL-2007-22

XXXXXXXXXXXXXXXXX.  
Attn: XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXX

December 4, 2007

Re: sale of CO<sub>2</sub> and rental of tank systems

Dear XXXXXXXXXXXX:

This letter is in response to your letter to the Colorado Department of Revenue, dated June 25, 2007, re: applicability of sales tax to sale of CO<sub>2</sub> and rental of tank systems. We apologize for the time it has taken to respond to your inquiry.

## Issue

1. Is the sale of carbon dioxide taxable?
2. Is the rental of tank systems taxable?

## Background

You state that your company is in the business of supplying liquid carbon dioxide along with the rental of tank systems that stores the carbon dioxide used to carbonate fountain drinks located at your customers' locations. It is not clear from your letter what you mean by a "tank system." I assume that, among other things, the tanks in which the carbon dioxide is shipped to the customer are part of the tank system. You have been collecting the tax and passing that cost on to customers. However, some of your customers feel that this is a tax on a tax.

## Discussion

1. *The sale of carbon dioxide to a retailer who uses the gas to carbonate soft drinks is exempt from tax.*

The sale of carbon dioxide which becomes an integral part of a soft drink is exempt from taxation. Specifically, §39-26-713(2)(e)(I), C.R.S., provides that:

(I) The storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service that is manufactured, compounded, or furnished, and the container, label, or the furnished shipping case.

(II) As used in subparagraph (I) of this paragraph (e) with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

(A) It is intended that such property become an integral or constituent part of a food product that is intended to be sold ultimately at retail for human consumption; or

(B) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product that is intended to be sold ultimately at retail for human consumption.

Such a sale by a supplier to a retailer is an exempt sale for resale. See, Department Regulation (39-)26-102.20 (sale by a supplier of carbon dioxide used by the retailer for the carbonation of soft drinks is not subject to sales tax). You can view and download this regulation by visiting our web site at:

[www.revenue.state.co.us](http://www.revenue.state.co.us) (go to Taxation > Publication and Resources > Regulations > Final Tax Regulations > Sales and Use Tax > Regulation (39-)26-102.20)

*2. Tanks used to ship non-taxable carbon dioxide are also not taxable. It is not clear whether the tank system includes equipment other than the shipping tanks.*

It is not clear whether the rental of the tanks is taxable based on the limited facts set forth in your letter. In general, Colorado levies a tax on the sale of tangible personal property. §39-26-104(1)(a), C.R.S. A “sale” includes the rental of such property. §39-26-102(23), C.R.S. However, subsection 713(2)(e)(I), quoted above, exempts the container in which an exempt ingredient is shipped. If the tank system you rent is primarily for the shipping of the carbon dioxide, then the rental of the tank is exempt. See, for example, *Coca Cola Bottling of Memphis v. Tennessee Department of Revenue*, Docket No. 02S01-9111-CH-00054 (93343-2 R.D. and 93299-2 R.D. Below), Tennessee Supreme Court (1993) (tanks used to shipped carbon dioxide and syrup to retailers are not taxable). However, “tank system” suggests that you provide more than just tanks for shipment. If the tank system includes a variety of equipment, then the rental of the tank system is taxable. If the other components can be characterized as merely incidental to the tanks, then the rental is not taxable. If the other equipment is more than incidental, you might consider separately stating on the invoice the rental price for the tanks and other equipment, and calculate the tax only on the rental of the latter. Please note that it is improper to understate the rental price for the taxable rental and overstate the rental price for the exempt property.

If the tank rental is taxable and if you separately state the price for the carbon dioxide and the rental of the tank system, then you should charge tax only on the rental. If the prices for the carbon dioxide and tank rental are not separately stated, then the rental tax is computed on the entire price (i.e., the prices for both the carbon dioxide and tank rental).

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

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