

STATE OF COLORADO

DEPARTMENT OF REVENUE

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GIL-2007-1

Bill Ritter, Jr.
Governor

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Executive Director

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

December 4, 2007

Re: motor vehicles, leases, credit for taxes paid to another state

Dear XXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated August 10, 2007, re: taxability of leased vehicles. We apologize for the time it has taken to respond to your inquiry.

Issue

You ask whether, under a variety of different circumstances discussed below, Colorado allows a credit for taxes paid to another state.

Background

You ask a series of questions that are premised on the following scenario. Motor vehicles are first leased in another state (the "First State"), tax is paid to the First State, and the motor vehicle is subsequently moved to Colorado during the term of the lease. You represent that some First States impose a tax on the lessor's purchase of the motor vehicle, while other First States impose a tax up front at the lease inception upon all payments to be made under the lease. You ask us to assume that the lessor has obtained permission from the Colorado Department of Revenue to collect tax on each lease payment, regardless of whether the lease is more or less than three years in duration.

Discussion

1. *Colorado allows a credit for the sales tax paid to the First State.*

With the exceptions noted in Response 2 and 4, below, Colorado allows a credit for taxes paid to another state on motor vehicles. Colorado levies a sales and use tax on the sale, use, storage and consumption of tangible personal property in Colorado, including motor vehicles. §39-26-202, C.R.S.; see, also, §39-26-208, C.R.S. (no registration without payment of use tax). In cases where the vehicle is first leased in another state, Colorado levies a use tax on the lessee/purchaser when the vehicle is registered in Colorado. The lessee is entitled to a credit for sales tax paid in the First State. Specifically, §24-60-1301 (article V), C.R.S. states that, "Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another State and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the State, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision." See, also, §39-26-713(2)(f), C.R.S.

2. *A lessee is entitled to a credit for taxes paid another state only if the legal incidence of the First State's tax falls on the lessee.*

Both §39-26-713(2)(f) and §24-60-1301 (Article V), C.R.S. state that a person is entitled to a credit for taxes "paid by him." Colorado law generally distinguishes between the person on which the legal incidence of the tax falls and person(s) who simply bears the economic burden of the tax. For example, Colorado can levy a sale or use tax on building and construction materials used for the construction of a federal building, notwithstanding the fact that the contractor likely passes the economic burden of the tax onto the federal government, because the incidence of tax is on the contractor, not the building owner. See, e.g., *Temple v. Arthur Venneri Co.*, 172 Colo. 105 , 470 P2d 576 (Colo. 1970). Therefore, if the incidence of taxation in the First State falls on the lessor and not the lessee, then the lessee has not paid the tax to the First State. This is true even though the lessor likely passes the cost of the tax onto the lessee, either explicitly or implicitly within the lease payment.

3. *The First State does not have to offer a reciprocal credit in order for a taxpayer to be entitled to a credit in Colorado.*

Neither §39-26-713 nor §24-60-1301 condition the Colorado credit on the other state offering a similar credit for taxes paid in Colorado.

4. *Credits for "excise" taxes and "titling" taxes paid in the First State.*

Without more information about the excise and titling taxes, the department declines to offer specific advice about whether a credit is available for "excise" or "titling" taxes paid in the First State. "Excise" tax is a very general term in tax law and can encompass a variety of taxes. We are not familiar with titling taxes and under what circumstances it is assessed.

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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