



**COLORADO**  
**Department of Revenue**

Taxation Division

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GIL-17-002

January 24, 2017

XXXXXXXXXXXXXXXXXX  
Attn:XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Re: Equipment Leases

Dear XXXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance on whether sales or use tax applies to leases of computers to students.

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**

1. Does sales tax apply to leases of computers and related equipment used by students?
2. Is the lease exempt from taxation under the exemption for sales to schools?

**Background**

Company leases computers and related equipment that provides educational materials to students. The lease is entered into by the student and, at the end of the lease term, the student can purchase the computer and related equipment for \$1.

## Structure of Analysis

To determine whether Company has an obligation to collect Colorado sales or use tax for computers and related equipment leased to students, the Department will examine the following questions:

1. Is the lease of computer and related equipment subject to sales tax pursuant to §39-26-104 and 111, C.R.S.?
2. Is the lease exempt pursuant to §39-26-704(4) or 725, C.R.S.?

## Discussion

Colorado imposes sales tax on the sale or lease of tangible personal property.<sup>1</sup> A sale includes a sale made on credit and the buyer pays in installments. Some leases are treated as a credit sale (sometimes referred to as a finance lease) rather than a “true” lease. A lease that is not a true lease allows the retailer to make a sale on credit while retaining title to the goods until the final payment is made.<sup>2</sup> There are several factors that may be considered when evaluating whether a lease is a credit sale, but, generally speaking, a lease is treated as a credit sale if the lease is irrevocable by the lessee for the initial term of the lease and the lessee can purchase the property at the end of the lease term for the nominal value.<sup>3</sup>

Moreover, even if what Company characterizes as a lease is not a credit sale but is a true lease, the computers are subject to tax. Lessors who make leases of three years or less in duration (short term leases) are treated as the consumer of the leased property and must pay sales or use tax on the leased property at the time of acquisition. However, the lessor may obtain permission from the Department to collect sales tax on lease payments if the lessor files form DR 0440.<sup>4</sup> Lessors whose leases are longer than three years must collect sales tax on lease payments.<sup>5</sup>

Sales to schools are exempt.<sup>6</sup> This exemption does not extend to sales to students.<sup>7</sup> For example, students often purchase learning materials, such as supplemental learning materials, from bookstores and there is no basis for claiming such sales are exempt from tax. The Department has previously provided guidance that sales of books and other learning materials by schools to students is subject to tax.<sup>8</sup> The same rationale applies here. Company is not selling or leasing its product to schools. The lease is entered into by the student, the student is liable for the installment payments, and the student owns the equipment at the end of the lease. Therefore, the transaction is likely not exempt under the sales to school exemption.

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<sup>1</sup> § 39-26-104, C.R.S. Sales tax on leases depends on whether the lease is a short term or long term lease. See, §39-26-102(23), C.R.S. We not address this distinction here because we conclude that the Company’s lease are not true leases but rather sales on credit.

<sup>2</sup> § 39-26-111, C.R.S.

<sup>3</sup> The criteria for determining whether a lease is sale on credit are set forth in § 4-1-203, C.R.S. Company states that the lease is not a true lease but, rather, is a credit sale.

<sup>4</sup> § 39-26-713, C.R.S.

<sup>5</sup> § 39-26-102(23), C.R.S.

<sup>6</sup> § 39-26-704(4), C.R.S.

<sup>7</sup> See, § 39-26-704(4), C.R.S. and Department Rule, 1 CCR 201-4, 39-26-718 paragraph (8)(d)(i).

<sup>8</sup> See, e.g., PLR-16-007

Finally, sales by parent / teacher associations, booster club, and student groups are also exempt.<sup>9</sup> However, this exemption does not apply here because Company is not one of the listed exempt sellers.

### **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](http://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 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

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<sup>9</sup> § 39-26-725, C.R.S.