

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
(303) 866-3091
FAX (303) 866-2400



GIL-2008-7

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

February 28, 2008

Re: taxability of plates, utensils, etc. related to food service

Dear XXXXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated December 31, 2007, re: the taxability of food service supplies.

Issues

You ask for guidance regarding whether the following item is subject to sales or use tax. Paper and plastic supplies used in providing food at a licensed daycare facility.

Background

You provide the following information. You operate a number of licensed daycare centers with a focus on education. You are a for-profit enterprise and do not hold a 501(C)(3) certificate from the Internal Revenue Service. You charge a weekly tuition for services. Food is provided to children as an incidental element of the service. Although you characterize the food service as optional, the price does not vary depending on whether the customer (parent) elects to supply their children food or have you provide the food.

Discussion

Colorado imposes sales and use tax on the sale, use, storage, or consumption of tangible personal property. §39-26-104(1)(a) and 204, C.R.S. Although you have not asked for a determination whether food you serve is taxable, I note that food sold in public and private schools and in other similar institutional settings is generally exempt from tax because such institutions are generally not considered to be commercial enterprises which regularly sell food to the public. See, e.g., *Colorado College v Heckers*, 517 P2d 419 (Colo. 1973).

Your company is considered is a service provider. As such, the company is considered the consumer of tangible personal property used in connection with its enterprise, even if the property is transferred to, or used by, its customers. See, Department Special Regulation 40 (Service Enterprises). For

example, the company is considered the consumer of coloring paper, crayons, and glue, which it uses to provide its educational services, even though these supplies are often transferred to, and used by, the children. This means that the company should not charge customers sales tax when such items are transferred to, or used by, the children. However, and because the company is considered the consumer, the company must pay sales tax when it purchases these supplies from suppliers. Sales to private and for-profit schools are not exempt. See, §39-26-704(4), C.R.S. and Department Regulation (39-)26-704.4. Therefore, the company must pay sales tax on paper and plasticware used in the conduct of its business, including serving food to children.

The department has a number of publications and other resources available to you regarding sales tax, electronic filing options, and other tax related issues. Visit us at: www.revenue.state.co.us and go to Taxation.

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,

Steve Asbell
Taxpayer Service Division
Phone 303.866.3889
Email sasbell@spike.dor.state.co.us