

STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-12-014

December 31, 2012

XXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Full-Service Truck Wash and Supplies

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on truck washes and products.

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 and 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 regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

Issue

1. Is a full-service truck wash subject to Colorado sales and use tax?
2. Is Company subject to use tax on purchases of the following items used in the wash process?
 - a) Soaps and cleaning agents
 - b) Water, electricity and natural gas
 - c) Salt for water softeners
 - d) Wax and other protective products
 - e) Equipment and other supplies

f) Freight for delivery of any of the above

Background

Company operates a full-service truck wash in Colorado. Company does not sell any personal property, other than wax and other protective coatings that may be applied during the wash process.

Discussion

The Department does not have a regulation or publication that specifically addresses your inquiry. The following is a general discussion of the tax issues surrounding your request.

Colorado imposes sales and use tax on the sale of tangible personal property. §39-26-104 and 202, C.R.S. In general, Colorado does not levy sales tax on services, except in certain circumstances.

If a retailer provides both taxable tangible personal property and non-taxable services, the question arises whether some, all, or none of the price is taxable. This will generally turn on whether the “true object” of the transaction is the sale of a service or the sale or rental of tangible personal property. This determination can be complicated and is often reached by looking at a variety of factors. In a somewhat analogous situation, we have determined that when a retailer provides both a truck and an operator, the transaction is not considered a taxable lease of property.¹ In cases such as this one, the Department tends to view the true object of the transaction as a non-taxable service if the operator controls the truck.

However, if the retailer separately states the charge for the truck and operator, then the transaction is generally treated as a taxable rental of property and a non-taxable provision of a service.

We assume by full-service you mean that Company’s employees are using and running the equipment rather than the customers. If this is the case, then it suggests that the true object of this transaction is not the rental of the equipment, but the performance of the service of truck washing. If the retailer is providing a non-taxable service, then the retailer’s purchase of the equipment will be subject to use tax. The retailer is also liable for use tax on products, such as soaps and wax, used by the retailer to provide the service.

If a customer purchases wax and other protective coatings that are in their own packaging and intended to be applied by the customer and not the retailer, then the Department would probably view these purchases as a taxable sale of goods. If, however, those products are included in different levels of service (base level includes just a wash; mid-level includes base wash and protective coatings, top level includes base wash, protective coatings and wax), then sales tax would likely not apply but the retailer would be liable for use tax. Again, we do not reach any conclusion here on these issues.

¹ See, Department Regulation 39-26-102.23, which can be viewed at www.colorado.gov/revenue/tax > Tax Library > Regulations > Final Regulations > Sales Tax

Additionally, §39-26-102(21)(a), C.R.S exempts certain uses of electricity and certain gases.

Sales and purchases of electricity, coal, gas, fuel oil, steam, coke or nuclear fuel, for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone and radio communication, street and railroad transportation services, and all industrial uses, ... shall be deemed to be wholesale sales and shall be exempt from taxation under this part 1 [sales taxes].

The taxability of freight charges depends on a number of factors, such as whether the freight charges are separately stated, whether they are optional, and who controls the freight. For a more specific discussion of freight charges, we have included Department Publication FYI Sales 29, "Transportation Charges" for your convenience.

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/revenue/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
Tele: (303)866-5627
Email: neil.tillquist@state.co.us

FYI – For Your Information

Special Regulation: Transportation Charges

1) The transportation of tangible personal property between a retailer and purchaser is a service presumed to be not subject to sales or use tax. Transportation charges are not taxable if they are both (1) separable from the sales transaction, and (2) stated separately on a written invoice or contract.

a) **“Transportation charges”** include carrying, handling, delivery, mileage, freight, postage, shipping, trip charges, stand-by, and other similar charges or fees.

b) **Separable charges.** Transportation charges are separable from the sales transaction if they are performed after the taxable property or service is offered for sale and the seller allows the purchaser the option either to use the seller's transportation services or use alternative transportation services (including but not limited to the purchaser picking up the property at the seller's location). The fact that transportation charges are stated separately does not, in and of itself, mean the charges are a separable charge.

c) **Stated Separately.** Transportation charges will be regarded as “separately stated” only if they are set forth separately in a written sales contract, retailer's invoice, or other written document issued in connection with the sale.

d) **Intermediate or “Freight in” charges.** Transportation charges incurred in connection with transporting tangible personal property from the place of production or the manufacturer to the seller or to the seller's agent or representative, or to anyone else acting in the seller's behalf, either directly or through a chain of wholesalers or jobbers or other middlemen, are deemed “freight -in” charges and are not a transportation charge exempt from tax.

e) **Overstated Transportation Charges.** The amount of transportation charges excluded from the calculation of tax shall be the amount of transportation charges separately stated in accordance with subparagraph (c), provided that such separate statement is not to avoid the tax upon the actual sales price of tangible personal property.



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