



# COLORADO

Department of Revenue

Taxation Division

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GIL-20-002

May 12, 2020

XXXXXXXXXX  
Attn: XXXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Re: Sales tax on spray-on truck bed liner

Dear XXXXXXXXXXX,

You submitted a request for a general information letter regarding the applicability of sales tax on the sale of spray-on truck bed liners on behalf of an anonymous company ("Company").

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 1 CCR 201-1, Rule 24-35-103.5.

The Department grants your request for a general information letter regarding the first issue posed. 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 you would like the Department to issue a private letter ruling on the issue raised here, you may submit a request and pay the fee in compliance 1 CCR 201-1, Rule 24-35-103.5.

Regarding the second issue posed, we decline to issue a general information letter because the issue calls for a conclusion that is largely based upon, and applicable to, specific and particularized facts. Such issues are more appropriately addressed in private letter rulings.

## Issue

Are Company's sales of chemicals to independent franchisees and other businesses taxable retail sales or wholesale sales?

## Background

Company makes the following representations regarding this issue:

Company is a retailer of raw materials (chemicals) which are sold to primarily independent franchisees and other businesses purchased for use in manufacturing bed liners. In contrast to traditional "in place bed liners" which are purchased whole and installed into the beds of automobile trucks/vehicles, Company's patented chemicals undergo a chemical reaction process and are transformed to constitute the bed liner upon being applied to automotive beds by the independent franchises and other businesses which purchase Company's chemicals.

## Discussion

Wholesale sales are not subject to tax.<sup>1</sup> The definition of a wholesale sale includes a sale of ingredients or components to a manufacturer if the manufacturer, through chemical or mechanical means, incorporates the material into a manufactured product.<sup>2</sup> Specifically, Colorado law provides that:

"Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, 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 which is manufactured, compounded, or furnished . . . shall be deemed to be wholesale sales and shall be exempt from [sales] taxation . . . ."<sup>3</sup>

The tax character of Company's sales will also depend upon how its purchasers' (i.e., the franchisees') sales to their customers are characterized. The franchisees' sales to customers will generally be treated as a sale of tangible personal property if the customer's objective is to acquire the tangible personal property even though the franchisee also employs labor in connection with the transfer of the property.<sup>4</sup> If the true object of the franchisee's transaction with the customer is the sale of a service, then the Company's sale to the franchisee is not a wholesale sale because the franchisee is the consumer of the property.<sup>5</sup> This is the case even if the cost of the materials is included in the price charged to the customer, and title and/or possession of the materials used transfers to the customer.<sup>6</sup>

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<sup>1</sup> Sales tax applies to retail sales and retail sales do not include wholesale sales. Sections 39-26-104(1) and -102(9), C.R.S., respectively.

<sup>2</sup> 1 CCR 201-4, Rule 39-26-102(20).

<sup>3</sup> Section 39-26-102(20), C.R.S.

<sup>4</sup> 1 CCR 201-5, Special Rule 40.

<sup>5</sup> *Id.*

<sup>6</sup> *A.B. Hirschfeld Press, Inc. v. City and County of Denver*, 779 P.2d 1356, 1359-60 (Colo. 1988).

**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 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 self-collected home-rule cities and home-rule counties. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at [www.colorado.gov/tax](http://www.colorado.gov/tax) for more information about state and local sales taxes.

Sincerely,

Office of Tax Policy Analysis  
Colorado Department of Revenue