



COLORADO
Department of Revenue

Taxation Division

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GIL-15-006

February 17, 2015

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Re: Late Payment Fees

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales or use tax on late payment fees.

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 Rule 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 Department Rule 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. Are late payments excluded from the sales tax calculation?

Discussion

In GIL 13-015, the Department stated that late payment fees are not included in the calculation of sales tax unless the fee is not separately stated from the purchase price. This advice corrects prior guidance provided in a Q&A that has been removed from the Department's web site.

We think it also helpful to explain the consistency between the exclusion of the late payment fee from the tax base and the application of sales tax in credit sales. Specifically, the Department has previously given guidance on what are often referred to as "2/10 net 30" transactions, which are credit sales in which the retailer reduces the sales price by two percent if the buyer pays within ten days of the sale. Sales tax is computed on the full purchase price and not on the reduced price if the buyer subsequently makes a payment within the ten day period. Sales tax applies to the full purchase price because sales tax is a transactional tax. Events that occur after the sale generally do not affect the calculation of the tax.¹ The Department's guidance in the case of "2/10 net 30" credit sales and late payment fees reflects this basic principle. Tax on the "2/10 net 30" credit sale is based on the stated sales price at the time the transaction is created. The fact that the price may be reduced after the sale if payment is made within ten days does not affect the calculation of the sales tax at the time the transaction was created. Similarly, a late payment fee is generally assessed after a sale is created and when payment is untimely made. The late payment penalty typically reflects the finance or administrative charge for events after the sale and, therefore, do not reflect or affect the sales price at the time the transaction was created.

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

¹ See, e.g., *Southern California Edison Co. v. State Board of Equalization*, 7 Cal 3d 652 102 Cal Rptr 766, 498 P2d 1014 (1972) (retailer not entitled to sales tax refund for a price adjustment made subsequent to sale and based on damages paid by retailer to purchaser).