



COLORADO
Department of Revenue
Taxation Division

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GIL-15-007

March 10, 2015

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Leases of Low-Emitting Heavy Vehicles

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales or use tax on the lease of a low-emitting heavy vehicle.

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. Does the low-emitting heavy vehicle exemption flow through to the long-term lease?
2. If the exemption applies to leases, how is Form 1369 completed, and who is required to file the three documents set forth in Form 1369?

Background

Company is in the business of leasing motor vehicles. A third party purchases motor vehicles and then enters into leases with lessees. The lease period is seventy-five months. The third party then assigns the leases to Company. The purchase, lease,

and assignment occur simultaneously. Vehicles are registered in another state and garaged in Colorado. Company represents that the motor vehicles meet the requirements of the sales and use exemption for low-emitting vehicles.

Discussion

Motor vehicles that meet certain emission standards are exempt from sales and use tax.¹ A long-term lease (a lease longer than three years) is treated as a sale for sales and use tax purposes.² Thus, exemptions apply to sales and use taxes collected on long-term lease payments.

A person is presumed a motor vehicle dealer if it sells or leases three or more motor vehicles in a calendar year.³ If the third party sells or leases three or more cars in a calendar year then the third party is the "dealer" for purposes of completing form 1369. Company is not a dealer because it did not enter into the lease with the lessee - it took the lease by assignment.

Either the lessee or dealer may file the three qualifying documents set forth in Form 1369.

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 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
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Email: neil.tillquist@state.co.us

¹ § 39-26-719, C.R.S.

² § 39-26-102(23), C.R.S.

³ § 12-6-102(13), C.R.S.