



COLORADO
Department of Revenue

Taxation Division
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GIL-14-020

October 2, 2014

XXXXXXXXXXXXXXXXXX
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Re: Marijuana RFID Tags

Dear XXXXXXXXXXXX,

You ("Firm") submitted a request for guidance to determine whether or not marijuana radio frequency identification ("RFID") tags are subject to sales and use tax.

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

Are marijuana RFID tags subject to sales and use tax?

Background

Marijuana RFID tags are commonly used to both identify and track marijuana. The tag digitally tracks a marijuana plant throughout its life by attaching a number to the product and tracking its movement throughout the supply chain up to the point of sale. It is the grower's duty to give each plant a RFID tag with a unique 24-digit identification number at the beginning of its life. As the plant matures and is harvested, the dried product is packaged for shipment to retailers and the grower affixes a new RFID tag to the dry product's packaging. The new RFID tag number is linked to the previous tag number to keep a record of the product's history. The RFID tags are linked to a state-mandated

software program called the Marijuana Inventory Tracking System ("METRIC"). The Marijuana Enforcement Division of the Colorado Department of Revenue ("MED") uses this software to monitor the movement of marijuana in the supply chain. RFID tags are discarded by marijuana businesses at appropriate times in the supply chain and they do not reach the final consumer. The MED requires the use of RFID tags on marijuana to ensure proper handling and recording of the product.

Discussion

Colorado levies sales and use tax on the sale, use, consumption, or storage of tangible personal property, unless an exemption applies. As an initial matter, we note that exemptions from tax are narrowly construed. Unless an exemption clearly applies, the exemption must be denied.

Firm cites FYI Sales 13 (10/02) in its argument and asserts that marijuana RFID tags fall within the exemption for farm equipment as a label. FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, does not formally review or approve FYIs. FYI Sales 13 referred to an outdated version of Special Regulation 2 (Agricultural Products and Equipment). Special Regulation 2 (Agricultural Products and Equipment) was amended and the amended version became effective on May 30, 2014.

§39-26-716(1)(d), C.R.S does not include labels in the definition of farm equipment. The statute is very specific and refers to an exclusive list of exempt items, not including labels. Therefore, Special Regulation 2 (Agricultural Products and Equipment) was amended to reflect the statute by excluding label from its definition of farm equipment. This change was not yet reflected in FYI Sales 13. The Department will work diligently to address this discrepancy (FYIs referring to special regulations are being withdrawn, but the website will not be updated until October 1, 2014).

Therefore, unless some other exemption applies, marijuana RFID tags are subject to sales or use tax when purchased by marijuana cultivators. Because the farm equipment exemption does not include labels, the Department does not need to reach the issue of whether or not marijuana is an agricultural product and we decline to do so in a general information letter.

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