



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

GIL-17-010

April 25, 2017

XXXXXXXXXXXXXXXXXX
Attn:XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Medical Imaging Equipment

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX (“Company”) a request for guidance regarding the application of sales and use taxes to service agreements, shipping, restocking fees, services, and resale certificates related to the sale of medical equipment.

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

The Department treats this request as a general information letter. 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 Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

1. Is revenue received from service agreements subject to sales tax?
2. Is a charge for shipping subject to sales tax?
3. What, if any, sales tax refund is due if Company charges a restocking fee?
4. What resale certificate is Company required to receive?

Background

Company sells medical imaging equipment and provides services for several types of medical imaging equipment pursuant to service agreements or on a non-contract basis. The service agreement is entered into either at the time of purchase from Company or when the equipment is already installed. The agreement can include only labor or both labor and parts.

Structure of Analysis

To determine whether Company's transactions are subject to sales and use tax, the Department will examine the following questions:

1. Is the sale of services inseparable from the sale of the equipment?
2. Is a refund due if Company charges a restocking fee?
3. How does Company document a wholesale sale for resale?

Discussion

Service Agreement

Colorado levies sales or use tax on the sale or use of tangible personal property but generally does not impose tax on services.¹ Services provided pursuant to service agreements that are not entered into in connection with the original purchase of the equipment are generally not subject to tax if the company providing the warranty or service does not charge the customer for repair and replacement parts. The company providing such service must pay tax on the price of tangible personal property used to provide this service when the property is bought or removed from inventory.² However, if the company, as part of the service agreement, charges the customer for repair or replacement parts, then the company must collect sales tax from the customer on the price it charges for such parts.

If the services Company provides pursuant to a service agreement are inseparable from the sale of the original equipment, then the price for the service is included in the calculation of sales tax for the taxable goods.³ Services are separable from the sale of taxable goods if the service agreement is optional and the price for the service agreement is separately stated. A retailer may request permission from the Department to collect sales tax only on the rental of tangible personal property and not on the maintenance contract if the relative prices can be adequately documented.⁴

If the sale of the equipment is non-taxable⁵, then the sale of a service agreement is also non-taxable, even if the service agreement is inseparable from the sale of the goods or if the price for the services is not separately stated.⁶

Shipping

Shipping is a non-taxable service and charges for such are presumptively not included in the calculation of tax when selling taxable goods.⁷ However, there are two common situations where the shipping charge is included in the purchase price of taxable goods. First, if the retailer requires the buyer to use the retailer's shipping service as part of the purchase of taxable goods, then the charge for shipping is included in the calculation of sales tax on the purchase of the goods. Second, if the retailer does not separately state

¹ § 39-26-104, C.R.S.

² Department Regulation 1 CCR 201-4, 39-26-105.2

³ *AD Stores v. Department of Revenue*, 19 P.3rd 680 (Colo 2001)

⁴ § 39-26-105(4), C.R.S.

⁵ Although Colorado exempts a variety of medical equipment, it does not appear that the sale of medical imaging equipment is exempt. § 39-26-717, C.R.S.

⁶ The sale of the equipment to an exempt entity, such as a charitable organization or a government entity (e.g., a county hospital), is exempt from tax. § 39-26-704, C.R.S.

⁷ Department Special Regulation 18 (SR 18). 1 C.C.R. 201-5

the charge for shipping from the charge for taxable goods, then sales tax is calculated on the entire price.

Refunds

Pursuant to statute⁸, a tax refund is allowed only if the retailer refunds the “full purchase price.” A retailer has not refunded the full purchase price when it deducts a restocking fee. Therefore, no refund of tax is permitted in such case.

Company may exempt a sale to the purchaser as a wholesale purchase for resale if the purchaser presents Company with a Colorado sales tax license. For more information about how to document exempt sales, see Department FYI Sales 1.⁹

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
Office of Tax Policy Analysis

⁸ § 39-26-102(5), C.R.S. (defining gross taxable sales - “The taxpayer may take credit in this report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded whether in cash or by credit.”). See, also GIL 08-020 (no tax refund if retailer charges a restocking fee).

⁹ This FYI as well as other Department publications is available on the Department’s website at www.colorado.gov/tax > Education and Legal Research > FYI Publications > Sales.