



COLORADO
Department of Revenue

Taxation Division

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GIL-18-006

February 27, 2018

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XXXXXX

Re: Taxable Nature of Church Sales

Dear XXXXXX,

You submitted a request for guidance on behalf of XXXXXX (“Church”) regarding whether certain sales conducted by the Church are exempt from sales 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, 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

Must the Church collect sales tax on the price of meals or pre-packaged food it sells to Church patrons?

Background

A Church, located in Colorado, sells to its members prepared hot meals and certain prepackaged food items produced by the church. The Church currently collects sales tax on its sales of prepared meals and prepackaged foods.

Discussion

Sales made by charitable organizations, such as churches, are generally subject to state sales tax but may be exempt if the sales qualify as occasional sales.¹ Occasional sales are sales by a charitable organization that (a) occur up to but no more than 12 days in a calendar year, (b) the funds raised from the sales are retained by the charitable organization and used in the course of the organizations' charitable service,² and (c) from which net proceeds³ do not exceed \$25,000 in a calendar year.⁴ If, in a calendar year, the organization fails to meet any of these requirements, then all sales in that calendar year, including prior sales that were made when these conditions were being met, are subject to sales tax.⁵

Occasional sales by the Church of prepared hot meals or prepackaged food count towards the same threshold of the occasional sales exemption. It is important to note that the sales of some food items are exempt from sales tax. Food marketed for "home consumption" is exempt from sales tax, but many food items such as sodas and candy marketed for "immediate consumption" are not exempt and sales tax must be collected when sold.⁶

The Church must also consider whether the state-administered local taxing jurisdiction has the same exemption for occasional sales made by a charitable organization. If the local taxing jurisdiction does not have the same exemption, then local sales tax is due on all sales made by the Church. Department Form DR 1002 lists all state-administered local taxing jurisdictions and whether they have elected to tax occasional sales by charitable entities.⁷ This letter does not address the tax requirements of home rule cities and towns over which the Department has no taxing or collection authority.

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

¹ §39-26-718(1)(b)(I), C.R.S.

² §39-26-718(1)(b)(II)(B), C.R.S.

³ Net proceeds are calculated by taking the total gross receipts and subtracting expenses directly attributable to the event generating the proceeds. For more information on calculating net proceeds, see Department Regulation §39-26-718(7)(b)(ii).

⁴ §§ 39-26-718(1)(b)(II)(A) and (C)

⁵ Department Regulation §39-26-718(7)(b)(ii)(C)

⁶ Department Regulation §39-26-102.4.5(2), for more information on the taxable nature of food see also Colorado Department of Revenue FYI Sales 4: Taxable and Tax Exempt Sales of Food and Related Items.

⁷ Available to view at www.colorado.gov/pacific/sites/default/files/DR1002.pdf

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,

Ryan Doerflein
Colorado Department of Revenue
Office of Tax Policy & Analysis