



**COLORADO**  
**Department of Revenue**

Taxation Division

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Denver, CO 80217-0087

GIL-17-006

March 16, 2017

XXXXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Re: Optional Maintenance Agreement

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX (“Company”) a request for guidance on whether sales or use tax applies to Company’s optional maintenance agreement.

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**

Is the sale of an optional maintenance agreement entered into when a customer leases a vehicle subject to Colorado sales or use tax?

**Background**

Company is engaged in the business of leasing vehicles for periods between 24-48 months with some very limited 12 month leases. When leasing a vehicle, customers may purchase an optional maintenance agreement from a third party. The maintenance agreement is a separate contract from the lease contract and customers must separately sign each contract if they chose to purchase the maintenance agreement. The cost of the optional maintenance agreement can be financed within the lease and a separate line in the lease contract will identify the amount financed for the maintenance

agreement. Company charges Colorado sales tax on each monthly lease payment; however, the invoice for the monthly lease payment does not include a breakdown of the portion of the payment that relates to the optional maintenance agreement.

### **Structure of Analysis**

To determine whether Company's transaction is subject to sales tax, the Department will examine the following question:

1. Is the maintenance agreement separable from the lease of taxable tangible personal property?

### **Discussion**

Colorado imposes sales tax on each payment a lessee makes on a long-term lease of tangible personal property, including long-term leases of motor vehicles.<sup>1</sup> Long-term leases are leases whose initial lease term is longer than three years. For short term leases, Colorado requires the lessor to pay tax when acquiring the leased property, or the Department may grant the lessor permission to acquire the leased property exempt from tax and collect sales tax on the lease payments throughout the lease.<sup>2</sup>

Maintenance agreements when sold in connection with the sale or lease of taxable tangible personal property are generally subject to Colorado sales or use tax unless the maintenance contract is separable and separately stated from the sale or lease of the taxable tangible personal property.

Maintenance agreements must be separable from the sale or lease of tangible personal property to be excluded from the calculation of sales tax. A maintenance agreement is considered separable from tangible personal property when the agreement is optional. If the customer is required to purchase a maintenance agreement in order to lease the tangible personal property, such maintenance agreement is not separable from the tangible personal property. Company represents that the maintenance agreement is optional and the customer does not have to purchase such agreement in order to lease a vehicle. As such, the maintenance agreement is separable from the sale or lease of tangible personal property.

In addition, maintenance agreements must be separately stated from the lease of the tangible personal property on an invoice. Company represents that the maintenance agreement is a separate contract from the lease contract and customers must separately sign each contract if they chose to purchase the maintenance agreement. Additionally, Company represents that if the cost of the maintenance agreement is included in the lease, there is a separate line item detailing the cost of the maintenance agreement in the lease contract. The separate line item in the lease contract detailing the cost of the maintenance agreement fulfills the requirement that the maintenance agreement be separately stated from the sale or lease of the tangible personal property. The fact that the monthly lease payment does not include a breakdown of the portion of the payment that relates to the optional maintenance agreement does not alter our conclusion. The customer knowingly entered into the agreement and can see the amount on their maintenance agreement contract.

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<sup>1</sup> § 39-26-102(23), C.R.S.

<sup>2</sup> § 39-26-713(1)(a), C.R.S.

### **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](http://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,

Erika Hoxeng  
Colorado Department of Revenue  
Office of Tax Policy Analysis