



COLORADO
Department of Revenue

Taxation Division

Physical Address:
Office of Tax Policy Analysis
1375 Sherman Street, Room 607
Denver, CO 80203

Mailing Address:
Office of Tax Policy Analysis, Room 607
P.O. Box 17087
Denver, CO 80217-0087

PLR-20-001

January 24, 2020

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Re: Sales Tax and Daily Rental Fee Applicability to Vehicle Sharing Transactions

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX (“Company”) to the Colorado Department of Revenue (“Department”) pursuant to 1 CCR 201-1, Regulation 24-35-103.5. This letter is the Department’s private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Is Company, as a platform operator, obligated to collect sales tax from drivers on vehicle sharing transactions?¹
2. Is Company, as a platform operator, obligated to collect the daily rental fee from drivers on vehicle sharing transactions?

Conclusions

1. Company, as a platform operator, will be regarded as the lessor of vehicles leased through its platform and will therefore be obligated to collect sales tax from drivers because the vehicle sharing transactions will not qualify for exemption pursuant to section 39-26-713(1)(a), C.R.S.
2. Company, as a platform operator, will be regarded as the lessor of vehicles leased through its platform and will therefore be obligated to collect the daily rental fee from drivers.

Background

Company is considering entering the “vehicle sharing” or “peer-to-peer car sharing” business. Under the “peer-to-peer” model, individuals and businesses offer their vehicles for rental by the public on a short-term basis. Company is considering becoming what is commonly known as a

¹ Company requested guidance on two additional topics, which the Department concludes are adequately addressed by the ruling on this issue.

“platform operator.” Platform operators create websites or software applications that list vehicles available for use, and drivers use these sites to find and reserve vehicles and remit payment. Company requests guidance on its obligations to collect sales tax and the daily rental fee should it choose to become a platform operator.

Company expects that it will operate as follows. Company will enter into contracts with vehicle owners, and these contracts will set forth the terms and conditions that will govern the use of the vehicles. All amounts charged to drivers for their use of the vehicle will be paid to Company, and Company will then pay owners in accordance with the revenue formula described in its contract with owners. Under the terms of its contract with owners, Company will determine requirements for the condition and status of vehicles that will be available for lease, such as title and registration status, operability, safety, and maintenance of the vehicle. Company will have the exclusive right to determine the suitability of vehicles for listing on its platform. Under the contract, owners will agree not to enter into separate agreements directly with drivers for use of the vehicle.

Company will separately enter into contracts with drivers. These contracts will set forth several terms and conditions governing the driver’s right to use the vehicle and their payment obligations to Company for rent, fuel, traffic tickets and tolls, damage, and loss. The contract terms will include requirements that the driver possess a valid driver’s license, have a good driving history, and pass a criminal background check. Company may also offer ancillary services such as roadside assistance and damage protection coverage.

Both the listing and renting of the vehicles will be consummated through the Company’s website or application. The platform includes the terms and conditions that both the owner and driver must separately accept before the transaction can be consummated. Drivers will make payments directly to the Company, and the Company, not the vehicle owner, will have the authority to bill and collect payments. Company, not the vehicle owners, will have the contractual authority to impose and collect fines and fees against drivers and enforce the other terms and restrictions regarding the driver’s use of the vehicle.

Discussion

1. Applicability of the sales tax.

The Colorado Revised Statutes impose a sales tax upon all sales of tangible personal property at retail.² The term “sale” includes any transaction whereby a person transfers for consideration all or part of any interest in tangible personal property and encompasses all transactions involving the conditional or absolute transfer of title to or possession of tangible personal property (or both) for consideration.³ The term includes, therefore, leases and other contracts transferring the right to continuous possession or use of tangible personal property.

The statutes exempt leases or contracts involving the continuous possession or use of tangible personal property for three years or less (“short-term leases”) but the exemption is conditioned on the lessor’s payment of sales or use tax on its acquisition of the leased property.⁴ Normally,

² Section 39-26-104(1)(a), C.R.S.

³ 1 CCR 201-4, Reg. 26-102.10.

⁴ Section 39-26-713(1)(a), C.R.S.

an owner must pay either sales tax or use tax on its acquisition of a motor vehicle.⁵ However, a lessor may request permission from the Department to acquire a vehicle tax-free and instead collect sales tax on all lease payments received on the vehicle if the lease is a short-term lease.⁶

Company, not the owner, will be regarded as the lessor with respect to vehicles leased through its platform. Company is the party with whom a driver will enter into a contract for the possession and use of the vehicle. Company, and not the owner, will have the contractual authority to enforce the terms of the lease with drivers. For example, Company will have the authority to enforce restrictions on how the vehicle is used and the vehicle's condition when it is returned. The driver's obligation to pay for damages will be enforced by and paid to Company. Company will have the authority to assess fines and fees against the driver and enforce and collect payments, fines, tolls, tickets, and fees due from drivers. There will not be a contract between owners and drivers. Indeed, Company may prohibit owners from contracting directly with drivers as a term of its agreements with owners.

The driver's contract for the right to possess and use the vehicle for consideration is a taxable sale.⁷ Importantly, drivers acquire their right to possess and use the vehicle from Company pursuant to their contract with Company. Therefore, Company will be the lessor of vehicles rented through its platform. Company will not have paid any Colorado sales or use tax on such tangible personal property.⁸ As a result, Company's short-term lease of vehicles through its platform will not qualify for exemption pursuant to section 39-26-713(1)(a), C.R.S., and Company will be obligated to collect sales tax on the short-term lease payments it receives from drivers.

2. Daily vehicle rental fee.

Colorado imposes a daily vehicle rental fee of \$2 per day on the rental of certain motor vehicles for thirty days or less.⁹ The fee is imposed upon all short-term vehicle rentals.¹⁰ The phrase "short-term vehicle rental" is defined as, "the rental of any motor vehicle . . . with a gross vehicle weight rating of twenty-six thousand pounds or less that is rented within Colorado for a period of not more than thirty days."¹¹ The statute does not further define the term "rental," however, the Department concludes that the right to possess and use motor vehicles for consideration described above is within the meaning of that term. Therefore, Company will be required to collect this fee on qualifying vehicles leased through its platform for thirty days or less. The fee is collected by the lessor and reported and remitted to the department on form DR 1777.

⁵ See sections 39-26-113(1) and 208, C.R.S. (prohibiting the Department from registering a vehicle or issuing a certificate of title until taxes have been paid).

⁶ Section 39-26-713(1)(a), C.R.S.

⁷ Section 39-26-104(1)(a), C.R.S.; 1 CCR 201-4, Reg. 26-102.10.

⁸ Section 39-26-713(1)(a), C.R.S.

⁹ Section 43-4-804(1)(b), C.R.S. This fee is not imposed on certain vehicle sharing arrangements. It is the Department's general understanding that the transactions discussed in this letter would not qualify under the exemption. See, section 43-4-804(1)(b)(III), C.R.S. for the requirements of a qualifying vehicle sharing arrangement.

¹⁰ Section 43-4-804(1)(b)(I)(A).

¹¹ *Id.* at subsection (1)(b)(I)(B).

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts and that all representations are true and complete. The Department reserves the right, among others, to independently evaluate Company's representations and assumptions. The ruling is null and void if any such assumption and representation is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is subject to modification or revocation in accordance with 1 CCR 201-1, Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.