

STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-13-011

April 18, 2013

XXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXXXX
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Re: Plumber's Fees

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on particular plumber's fees.

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 regulation 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 regulation 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

1. Is a plumber considered a contractor when providing sewer inspection, clean-out and thawing services?
2. Does itemizing charges on an invoice for the use/rental of equipment and for an operator in the performance of the service change the contractor's use of the equipment from a contractor service to a rental of tangible personal property?
3. When is the plumber required to collect state-administered local taxes?

Background

Company provides tax advice to clients. Company's client is a plumber who provides sewer inspection, clean-out and thawing services and charges fees that separately states charges for time and material.

Discussion

The Department does not have a regulation or publication that specifically addresses your inquiry. The following is a general discussion of the tax issues surrounding your request.

Colorado has adopted special rules regarding the application of sales and use tax for contractors. Contractors are persons who incorporate tangible personal property into real property. Contractors who charge clients lump-sum do not collect sales tax from clients. If the contractor charges clients on a time-and-material basis, then the contractor collects sales tax from the client on the materials. The distinction is based on the assumption that, in the case of a lump-sum contract, title passes to the buyer after the property is incorporated into the real property, and, in the case of a time-and-material contract, title passes to the client before the property is incorporated into the real property.¹

Plumbers are commonly considered contractors if they are incorporating tangible personal property into real property. For example, a plumber is a contractor if the plumber installs a new water valve in the customer's home. We do not have sufficient information to determine whether a plumber is considered a contractor when providing sewer inspection, clean-out, and thawing services because it is not clear that the plumber is incorporating anything into the real property. However, our initial impression is that tangible personal property is not being incorporated into real property when such services are provided, and, therefore, the rules that normally apply to lump-sum and time-and-material contracts would not apply.

When a transaction involves the provision of a service and equipment, the Department typically views the transaction as the rental of the equipment if the rental charge is separately stated. For example, if a retailer provides temporary lighting for an event and separately states a charge for moving the lighting to the event site and a charge for the use of the lighting equipment, then the Department will typically treat the charge for the lighting equipment as a rental of that equipment. However, when retailer retains possession and control of equipment, then the Department will generally view the transaction as a service, notwithstanding the fact that the retailer has separately stated the charge for the equipment. In such cases, the retailer is the user of the equipment and must pay sales tax when it acquires the equipment and cannot collect sales tax from the client.

As a general rule, the plumber collects state-administered local sales taxes whenever state sales tax is due. If the plumber remits state use tax, then the plumber generally would not

¹ See Department Special Regulation SR-10, "Contractors, which can be viewed at www.colorado.gov/revenue/tax > Tax Library > Rules and Regulations > Final Regulations > Sales and Use Tax > SR 10.

collect state-administered local use taxes, because most state-administered cities and counties do not have a use tax. However, special districts (such as RTD and rural transportation authorities) levy use tax. Therefore, plumbers collect use taxes for special districts.

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
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