



COLORADO
Department of Revenue

Taxation Division

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GIL-16-005

May 11, 2016

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Refunds

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXX ("Company") a request for guidance to determine on what amount a refund should be made when a shipping charge is mandatory and not refunded.

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

The Department treats your request as one of 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 a determination of the tax consequence of any particular action or inaction. If you would like the Department to issue a private letter ruling on the issues you raise, you must submit a new request and provide the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

Must a retailer refund sales tax paid on charges for shipping if the retailer does not refund the shipping charge?

Background

Retailer sells taxable goods and ships the goods to customers. The shipping charges are mandatory because customers do not have the option of providing their own shipping. Retailer calculates sales tax on the price of the goods and the shipping charge. If a customer

returns goods for a refund, retailer will provide a refund of the purchase price for the goods but not for shipping.

Structure of Analysis

To determine whether to refund the sales tax paid on shipping charges, the Department will examine the following questions:

- 1) Is the item taxable under § 39-26-104(1), C.R.S.?
 - a) Is the item tangible personal property sold or purchased at retail?
 - b) If the item is not purely tangible personal property, does the item contain both potentially taxable and nontaxable elements?
 - i) If it contains both potentially taxable and nontaxable elements, are the nontaxable service components and taxable tangible personal property separable and separated?
- 2) Does the retailer refund the full purchase price of the taxable good pursuant to § 39-26-102(5), C.R.S.?

Discussion

Colorado levies sales tax on the sale of tangible personal property. Charges for services are generally not subject to sales tax, with some exceptions. Sales tax is calculated on the full purchase price paid by the buyer.¹ Charges for shipping are included in the sales tax calculation if the charges are mandatory or not separately stated on the invoice.² Company represents that it includes shipping charges in the sale tax calculation because the charges are mandatory.

When a retailer refunds to the buyer the full purchase price for the tangible personal property, the shipping charge becomes a separate and separable transaction. As such, the shipping charge is no longer taxable and the retailer must refund the sales tax paid on the shipping charge.

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

¹ §§ 39-26-104(1) and 102(12), C.R.S.

² 1 CCR 201-5, Special Regulation Sales 18, "Transportation Charges"

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