

# STATE OF COLORADO

## DEPARTMENT OF REVENUE

State Capitol Annex  
1375 Sherman Street, Room 409  
Denver, Colorado 80261  
Phone (303) 866-3091  
FAX (303) 866-2400



John Hickenlooper  
Governor

Roxanne Huber  
Executive Director

GIL 11-002

March 23, 2011

XXXXXXXXXXXXXXXXXX  
ATTN: XXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Re: Taxability of Personal Property Tax / Sales Tax

Dear XXXXXXXXXXXX,

You submitted on behalf of XXX ("Company") a request for guidance on the application of sales tax to county personal property tax. The 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 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.taxcolorado.org](http://www.taxcolorado.org) > FYI/Publication > Rulings.

The department initially treats your request as one for 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

When a lessor leases tangible property or equipment, pays the applicable property taxes, and bills the lessee for reimbursement, is the reimbursement paid by the lessee subject to sales tax, even if it was billed separately from the lease payment as a separate cost?

## Background

Company leases manufacturing equipment from XXXXXXXXXXXX ("Partnership"). Pursuant to the lease agreement, Company is required to reimburse Partnership for county personal property tax. Partnership bills Company separately from the lease payments for the county personal property tax. At the time Partnership requests reimbursement for county personal property tax, Partnership additionally charges sales tax on this amount.

## Discussion

Colorado counties have the option to levy a business personal property tax. The incident of taxation falls on the property owner, not the lessee. Parties to a private lease can agree that the lessee will reimburse the lessor an amount equal to the property tax. The question then becomes whether the reimbursement is included in the sales tax calculation.

Colorado imposes sale and use tax on the purchase price paid on all sales and leases of tangible personal property. §39-26-104(1)(a), C.R.S. "Purchase price" means,

the price to the consumer, exclusive of any direct tax imposed by the federal government or by this article [sales tax statute], and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange.

Section §39-26-102(7), C.R.S.

In FYI Sales 56, the department explicitly states that property tax levied against the lessor and reimbursed by the lessee is included in the sales tax calculation.

When sales taxes are collected on the lease payments, generally all payments required to be paid by the lessee pursuant to the lease contract are sales taxable. These payments can include such things as warranties and property taxes, regardless of who receives the payments. All amounts paid to any party to obtain uninterrupted use of leased property are lease payments.

This rule is also set forth in *Colorado Revenue Bulletin 99-19* (6/01/1999) which states:

C.R.S. 39-26-114(1)(a)(XII) [renumbered as §39-26-713(1)(a), C.R.S.] imposes a sales tax on "lease payments." It is the Department's position that anything paid by the lessee pursuant to the lease contract is a "lease payment." Therefore, if the lessee's reimbursement of the property taxes is made pursuant to the terms of the lease contract, it is a "lease payment" and is subject to tax.

When a lessor leases tangible property or equipment, pays the applicable property taxes, and bills the lessee for reimbursement, the reimbursement paid by the lessee is subject to sales tax, even if it was billed separately from the lease payment as a separate cost.

## **Miscellaneous**

Pursuant to state law and department regulation 24-35-103.5, noted above, the Department will make public a redacted version of this letter. Your letter requesting this general information letter is not made public. I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments, or objection concerning the redacted letter.

I hope this is helpful. Please feel free to contact me if you have any questions.

Sincerely,

Neil L. Tillquist  
Colorado Department of Revenue