

STATE OF COLORADO

DEPARTMENT OF REVENUE

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GIL-2007-13

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXXX
Attn: XXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

December 4, 2007

Re: rental of various items

Dear XXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated July 31, 2007, re: taxability of services. We apologize for the time it has taken to respond to your inquiry.

You state that you provide living quarters for oil drilling operations on a day to day basis. You also rent accessories, such as water systems, sewer systems, generators, light plants and any other equipment needed for the drilling location. You attach an invoice with a list of rentals and ask whether the rentals listed are taxable.

In general, Colorado imposes sales and use tax on the sale of tangible personal property. A "sale" includes a lease or rental of that property. §39-26-102(23), C.R.S. For rentals that are more than three years in duration, the lessor must collect from the lessee sales tax on each rental payment. For rentals that are three years or less in duration, the lessor is considered the end user. Therefore, there is no sales tax due on rental payments (except as otherwise noted immediately below), but the lessor must pay sales or use tax on the acquisition, use, storage or consumption of the property. However, the department may, at the request of the lessor who leases the property for three years or less, allow the lessor to acquire, use, store, or consume the property without first paying sales or use tax and, in lieu thereof, collect tax on rental payments.

In addition to state sales and use tax, special districts, cities and counties also levy sales and use taxes. See, Department publication DRP 1002 for a list of special districts, cities and counties that levy sales and use taxes. You can view and download this publication by visiting our web site at: www.revenue.state.co.us (go to Taxation > Forms > Businesses > Sales and Use Tax > DRP 1002). Please note that taxes levied by "home rule" cities and counties are not collected by the department. We encourage you to contact such jurisdictions if you are doing business within their jurisdiction.

Mobile Home – a mobile home is tangible personal property because it is not permanently affixed to real property. The rental period appears to be on a day-to-day basis and, therefore, the rental agreement falls within the rules for leases of three years or less in duration. The company, not the lessee, must pay use tax (assuming that the property was acquired by your company outside Colorado) on the use of the property in Colorado. The use tax is based on the full acquisition price of the property. You may claim a credit for sales or use tax paid to another state. Department Regulation 39-26-713.2(f). Alternatively, and in lieu of this use tax,

the company can request permission from the Department to collect sales tax from the lessee on rental payments.

I should note that Colorado also taxes the service of providing hotel and other living accommodations. §39-26-102(11), C.R.S. It appears, however, that the true object of your company's business is the rental of equipment and, therefore, is more properly taxed under the rules governing rental of personal property.

Satellite system – Same response as response to No. 1, above.

Transportation charges – Transportation charges are presumably not taxable if they are separable from the rental of the property and are separately stated on the invoice. In determining whether a transportation charge is separable from the rental of the property, the department will consider, among other things, whether the lessee has a realistic option to rent the product without using the lessor to provide the transportation service (e.g., lessee has the option of hiring a third-party to transport the property).

Cleaning fee upon return of the trailer – if this service is part of the rental of the mobile home and is not separable and separately stated on the invoice, then it is taxable. In general, the department will presume that such service is not separable from the rental of the mobile home if the lessee does not have a realistic option of obtaining this service from someone other than the company.

Electric Water Cooler – Same as No. 1, above.

Bottled water (5 gallons) – not taxable because bottled water is classified as non-taxable food. See, DOR Reg. (39-)26-102.4.5(1)(a)(3).

3000 gallon water system – Same as No. 1, above.

Transportation charge for water tank – Same as No. 3, above.

Delivery charge for 3000 gallons load bulk water – It is not clear whether this charge is for the water itself or only for the transportation of water. Water delivered in bulk by a water truck is taxable. See, Colorado Revenue Determination No. 23, 01/01/1993; DOR Regulation 26-102(15). See Response No. 3 re: transportation charges.

Transportation sewer system – Same as No. 3, above.

Chlorine, enzyme & bacteria tablets – Taxable. If the company uses these tablets as part of its service of maintaining the sewer system, the company is considered the end user of these tablets and the company, not the lessee, must pay this tax. Although the company is liable for the tax, there is nothing in the tax statutes that prohibits the company from recovering the cost of the tax in the rental paid by the lessee.

Pump out of sewer system – if this service is part of the rental of the sewer system and is not separable and separately stated on the invoice, then it is taxable. In general, the department will presume that such service is not separable from the rental of the sewer system if the lessee does not have a realistic option to not acquire the service or to acquire the service from someone other than the company.

Trailer mounted generator with additional 180 gallon fuel cell – Same as No. 1, above.

Transportation charge (miscellaneous equipment) – Same as No. 3, above.

Diesel fuel – Diesel fuel is taxed at the supplier level. No additional tax is due on the resale of the fuel by the company to end users.

Servicing generator – Service and warranty work on rented equipment is taxable unless the service contract is a separate contract from the rental contract, the lessee has a realistic option to not acquire the service or to acquire the service from another vendor, and the service charge is separately stated on the invoice.

If there is a reasonable doubt about whether a service or property is taxable, the company should collect the tax and remit it to the department. The buyer or lessee may apply to the department for a refund.

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

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