



COLORADO
Department of Revenue

Taxation Division

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1375 Sherman Street
Denver, CO 80203

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P.O. Box 17087
Denver, CO 80217-0087

GIL18-009

June 13, 2018

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Dear XXXXXX,

You submitted a request for guidance on behalf of XXXXXX (“Company”) regarding the application of sales tax to charges for the purchase of food ingredients and the subsequent sale of a food product to customers subject to tax.

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, but 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 this request as 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 binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

Is Company’s purchase of prepackaged dressing mix, which Company mixes with other food products to produce a condiment, exempt from tax and is the subsequent sale of the condiment to customers subject to tax?

Background

Company operates restaurants. Company purchases dressing mix packages from a supplier and compounds it with other food ingredients into a food product it sells to its customers at a separately stated price.

Discussion

When a restaurant makes condiments available to customers, the condiments are not treated as if they are sold to customers, just as napkins, plastic utensils, or carry-out boxes

are not treated as sold to the customer.¹ Rather, the restaurant is viewed as the user and consumer of these products and, therefore, must pay sales tax when these items are purchased from suppliers.²

The presumption underlying this rule is that the restaurant has not separately stated a price for the condiments. If a restaurant separately states a price for a condiment, then the restaurant has engaged in a taxable retail sale. In such cases, the sale by the supplier to the restaurant is not viewed as a sale to the ultimate consumer. It then becomes important to determine whether the sale to the restaurant is a wholesale purchase for resale and, if not, whether any exemption applies to such sale. A wholesale purchase for resale applies if the retailer resells the item in essentially an unaltered state.³ If the restaurant substantially alters the food ingredient by compounding it with other food ingredients, then the purchase of the food ingredient is not a wholesale purchase for resale.

Although a restaurant's purchase of food ingredients may not qualify as a wholesale purchase for resale, Colorado exempts the purchase of food ingredients that become an integral or constituent part of a food product that is intended to be ultimately sold at retail for human consumption.⁴ As discussed above, a separately stated price for a condiment is likely a retail sale.

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 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 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

¹ § 39-26-707, C.R.S.

² § 39-26-707, C.R.S.; 1 CCR 201-1, Rule 39-26-707.1(1)

³ *A.B. Hirschfeld v. City and County of Denver*, 806 P.2d 917 (Colo. 1991)

⁴ § 39-26-102(20)(b)(I), C.R.S.