

STATE OF COLORADO

DEPARTMENT OF REVENUE

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Bill Ritter, Jr.
Governor

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GIL-2009-002

March 17, 2009

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Colorado sales and use tax

Dear XXXXXXXXXXXX,

This letter is in response to your request for a ruling on how certain intra-company sales of building materials are taxed in Colorado. I apologize for the delay in responding to your request. The Department recently acquired the staff necessary to respond to written requests.

The Department has promulgated a regulation governing the issuance of general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law and is not binding on the department. A private letter ruling is a determination of the applicability of tax to a specific set of circumstances and is binding in the department. A party requesting a private letter ruling must provide certain information and remit a fee. For more information about general information letters and private letter rulings, please refer to the Department's regulation 24-35-103.5, C.R.S., which is available on our web site at: www.colorado.gov/revenue/tax.

Although you ask for a ruling, your request does not contain the information required for a private letter ruling. I will initially treat your request as one for a general information letter. You may resubmit this request for a private letter ruling.

Issue

What are the sales and/or use tax consequences of sales of building materials between controlled companies and to building owners?

Background

You provide the following information. Company A is a holding company and owns Company B and C. Company B manufactures trusses for buildings and Company C provides construction services. Company A is not located in Colorado. Company B and C are located

in Colorado. Company B sells trusses to Company C which installs the trusses for homes. In some cases, Company B both builds and installs the trusses.

Discussion

Colorado levies sales tax on retail sales of tangible personal property. §39-26-104, C.R.S. Building materials that are incorporated into real property are not considered personal property and, therefore, the building owner does not pay sales or use tax on such materials. Instead, the contractor is considered the provider of construction services and is the consumer of the building materials and supplies used to provide that service. Therefore, the contractor must pay sales tax when it acquires building materials.

A manufacturer's purchase of tangible personal property that becomes a component part of the manufactured good is exempt from sales and use tax. §§39-26-102(20) and 713(2)(b)(I), C.R.S. If the manufacturer is also the contractor, the manufacturer must pay use tax based on the cost of acquiring the building materials, but not the cost of labor to manufacture the goods. *International Business Machines v. Department of Revenue*, 374 601 P2d 622 (Colo. 1979).

The sales tax paid by a contractor is computed on the purchase price paid by the contractor. However, because Company B and C are controlled corporations (and, therefore, their sales among themselves are not arms-length transactions), it is important that the purchase price reflect the full fair market value of the goods. The Department will closely scrutinize the pricing of such transactions.

For more information about this issue, see Department FYI Sales 6 (Contractors and Retailer-Contractors -- Definitions and Sales Tax Requirements). You can access this and other tax resources on our web site at: www.colorado.gov/revenue/tax.

Miscellaneous

Pursuant to state law and department regulation 24-35-103.5, 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. As I noted earlier, general information letters provide only a general discussion of applicable law. You may request a private letter ruling which will provide a determination regarding the specific circumstances of your client. Please feel free to contact me if you have any questions.

Sincerely,

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