



COLORADO
Department of Revenue

Taxation Division

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GIL 18-007

May 14, 2018

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Re: Scaffolding Rental

Dear XXXXXX,

You submitted a request for guidance on behalf of XXXXXX (“Company”) regarding whether certain charges related to the rental of scaffolding are included in the calculation of sales 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, does not address specific sets of fact, 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.

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 specific issues 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

Are various charges related to the rental of scaffolding included in the computation of sales tax?

Background

Company is a contractor that provides scaffolding for rental. Company also provides the labor to erect, modify, and dismantle the scaffold as an additional service. Company has not specified whether it provides this labor for every scaffold rental, or whether it sometimes provides the scaffold only. Company requests guidance on items it bills to customers because it is unclear whether these items are considered part of the service Company provides or are an essential part of the rental. All of the charges listed below are stated separately when billing the customer and are quoted directly from Company's statement of facts:

1. Scaffold sheeting/Wrap/Bungee cords - This is sheeting designed to provide weather protection for our customers when using the scaffold. Bungee cords are used to secure the sheeting.
2. Wood Planks/Lumber- This provides the walkway to access and use the scaffolding.
3. Lighting/Flood lights - The lights may be used by us when building the scaffold as well as by the customer when accessing the scaffold for their own purpose.
4. Company Equipment charges - This is a charge to the customer for Company equipment that is used while performing the service or rental and can include:
 - a. Scaffold buggies used to hold and transport scaffold at the site
 - b. Delivery fees using Company truck
 - c. Forklifts to move scaffold at the site
 - d. Vehicles for employees to access the site
5. Third party equipment rentals - This is pass through charge to the customer and can include:
 - a. Forklifts
 - b. Vehicles
 - c. Additional scaffold
 - d. Scaffold buggies
 - e. Scaffold harnesses
 - f. Scaffold baskets
 - g. Compressors
 - h. Mobile office rentals
6. Consumables - This is a pass through charge and can include safety goggles, hard hats, tape, scaffold pins.
7. Labor to erect, modify and dismantle scaffold as an additional service.

Discussion

The application of sales tax to the rental of tangible personal property depends on the length of the rental period. For rentals that are for a period of three years or less, the lessor pays sales or use tax when it acquires the property and does not collect sales tax when the property is rented to customers.¹ It is irrelevant in this scenario whether the

¹ §39-26-713(1)(a), C.R.S.

various charges are considered part of the rental price because tax is not collected on the rental price.

Alternatively, the lessor may request permission from the Department to purchase the equipment exempt from sales and use tax and, instead, collect sales tax on lease payments made by lessee.² In this scenario, the lessor must determine if charges for services are separable from the rental of property, which is discussed in more detail below.³

The rental of scaffolding if delivered on its own without an associated charge for installation would likely be subject to sales tax. Related items, such as tenting, cords, wood planking, and lighting are also tangible personal property and the rental of such would likely be subject to tax.

A number of charges (“equipment charges”) are for transportation of rental property, including movement of the property on site. In general, charges for delivery of goods are presumed to be a non-taxable service.⁴ However, the charge for these services are included in the calculation of tax on the rental if the customer is required to purchase the service from the retailer (i.e., delivery is inseparable from the rental of property).⁵

It is not clear whether some of the equipment charges are for equipment that is used by the Company to provide a service or are charges for the customer’s use of the equipment. If the charge for the equipment is for the customer’s use of the equipment (i.e., the customer is in control of the equipment), then this is simply the rental of tangible personal property and is subject to tax. If the equipment is controlled by the Company, then the charge is not included in the tax base if the customer has the option not to incur the charge as part of its rental of the scaffolding.

With respect to the issue of consumables, it is not clear who is consuming the consumables. If the Company is consuming these as part of its service (i.e., Company employees’ use the hard hats when providing a service to customer and customers are charged for the hats) to customers, then the charge is included in the tax base if the service is also included in the tax base. If the consumable is used by the customer, then the charge for the consumable is subject to tax as a sale of tangible personal property.

However, in at least some instances the rental of the scaffolding appears to be done part and parcel with the charges for installation services (Item 7 above is a charge for installation and setup services). Transactions involving both tangible personal property and services require a fact intensive analysis which we are unable to opine on here.⁶ In general, the Department will first examine whether the sale of services is separable

² Ibid

³ Sales Special Regulation (SR) 14 “Service Enterprises.”

⁴ Sales Special Regulation (SR) 18 “Freight, Delivery, and Transportation Charges.”

⁵ Ibid

⁶ See, e.g., *A.D. Store Co. v. Dep’t of Revenue*, 19 p.3d 680, 682 (Colo. 2001).

from the rental of the property. In general, services that must be purchased as part of a rental of property are considered inseparable and tax is calculated on both the charge for service and the rental charge. Conversely, if purchase of the service is not required as part of the rental and the price for the service is separately stated, then the charge for the service is not included in the tax on the rental of property.⁷

In the case of scaffolding, it is likely that the true object of the transaction is the rental of the scaffolding and not the purchase of a service. If so, charges for service and equipment that are inseparable from the rental of the scaffolding are included in the sales tax calculation for the rental of scaffolding.

The analysis above applies to equipment owned and rented by the Company and to equipment owned by a third-party rental company whose charges are passed on to the ultimate user. If both the third-party lessor and Company have authority to collect tax on rental payments, the third-party lessor should treat the rental to the Company as a wholesale lease and not collect tax on lease payments, but the Company should collect tax on the lease payments it collects from the ultimate user.⁸ The Company can present its sales tax license to the third-party lessor in order to claim the rental as a wholesale lease. On the other hand, if the third-party lessor has authority to collect tax on lease payments but the Company does not, then the third-party lessor must collect tax from the Company and the Company cannot collect tax on lease payments from the ultimate user.

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 writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

⁷ See, e.g., GIL 12-018

⁸ Sales Special Regulation (SR) 40 "Service Enterprises."

Sincerely,

Neil Tillquist
Colorado Department of Revenue
Office of Tax Policy & Analysis