

STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

Barbara J. Brohl
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GIL-12-010

December 31, 2012

XXXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Re: Tangible Personal Property Assembled in Colorado

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on tangible personal property ("goods") shipped to and assembled in Colorado into other goods and then shipped out of the country.

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 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 regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of 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

Is the assembly of goods that are incorporated into a different good and shipped out of the country treated as wholesale sales or must Company pay tax on these goods?

Background

Company is a telecommunications company which purchases parts from various locations outside of Colorado and has them shipped to a third party contractor in Colorado. Once

these parts are assembled into another unit, they are exported out of the country for use in the telecommunications industry. The question at issue is whether Company is required to pay tax on parts purchased outside of Colorado that are then incorporated into other parts in Colorado before being exported out of the country, or are these parts treated as wholesale sales?

Discussion

Colorado generally exempts from sales and use tax tangible personal property purchased by a manufacturer who integrates the property into a finished manufactured or processed product and holds the same for resale. Specifically, sales and use tax do not apply to the:

[The sale, purchase, storage, use, or consumption of] tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service that is manufactured, compounded, or furnished,...¹

This exemption applies regardless of whether the finished goods are sold inside or outside Colorado.

However, once the goods are finished, sales tax applies to the sale of those finished goods when the goods are delivered to a buyer in Colorado. Sales of finished goods that are delivered to a buyer located outside Colorado for use outside of Colorado are not subject to sales tax.²

It is unclear from your ruling request whether the assembly of goods by Company into another unit is considered a manufacturing or fabricating process. In Department Regulation (39-) 26-102.12, these are generally defined as follows:

Manufacturing, producing, fabricating or processing is usually deemed to have occurred when tangible personal property is created, transformed or reduced to a different state, quality, form, property or thing. Transformation may occur by hand, machine, art, chemical action or natural means.

Miscellaneous

This letter represents the good faith opinion of Department staff who are knowledgeable of 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.

¹ §§39-26-102(20) and 713(2)(e)(I), C.R.S. You can view this statute by going to the Department's website at www.colorado.gov/revenue/tax > Tax Library > Statutes.

² Department Regulation 39-26-704.2. You can view this regulation on the Department's web site at www.colorado.gov/revnue/tax > Tax Library > Rules and Regulations > Final Tax Regulations > Sales and Use Tax.

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/revenue/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,

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