



COLORADO
Department of Revenue

Taxation Division

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GIL-16-011

July 6, 2016

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Vehicle Rentals

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX (“Company”) a request for guidance regarding the applicability of sales tax to vehicle rentals.

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 at www.colorado.gov/pacific/tax/letter-rulings

The Department treats this request as one for 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, the retailer can submit a request and fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

1. Are payments made in advance of vehicle rentals, in the form of either reservation fees or payment for the full rental charge, subject to sales tax, and if so, when is the applicable sales tax collected?
2. Are payments made in advance of vehicle rentals, in the form of either reservation fees or payment for the full rental charge, subject to sales tax if the customer does not appear at the scheduled time to rent the vehicle?
3. Is the taxability and timing of tax collection the same for both refundable and nonrefundable payments made in advance of the vehicle rental?

Background

Company provides short-term motor vehicle rentals to business, leisure, and insurance/warranty replacement customers. Company owns and operates various on and off-airport locations throughout the United States and in Colorado. Company normally collects rental charges at the time the rental vehicle is returned, although in certain instances time and mileage charges are collected in advance. Company is considering offering its customers additional payment options, including full or partial payment-in-advance of the actual vehicle rental.

Structure of Analysis

To determine whether payments Company collects in advance of vehicle rentals are subject to tax, the Department will examine the following questions:

- 1) Are reservation fees taxable sales of goods or services under § 39-26-104, C.R.S.?
 - a) Are charges similar to reservation fees, such as hotel room deposits, subject to tax under § 39-26-104, C.R.S.?
 - b) What does the characterization of deposit forfeitures and cancellation charges under Department Rule 1 CCR 201-5, SR-22 suggest for the taxability of vehicle reservation fees?

Discussion

Colorado levies sales and use tax on the rental of motor vehicles.¹ Tax is calculated on the purchase price.² The purchase price means the price paid by the consumer and includes the total consideration received by the vendor.³ However, various factors may affect the taxability of certain charges and the timing of sales tax collection.

The taxability of advance payments for motor vehicle rentals is not explicitly addressed in statute, regulation, or any published Departmental guidance.⁴ However, Colorado regulations and guidance regarding sales tax on hotel rooms and accommodations serve as an appropriate analogue and help elucidate the tax treatment of advance vehicle rental payments.

Colorado law imposes sales tax on hotel rooms and accommodations.⁵ Deposits made to reserve hotel rooms are not taxable when paid in advance, but when rooms are furnished any previously paid deposits are taxable.⁶ Furthermore, a deposit that is forfeited due to cancellation is considered payment for a room and is therefore fully taxable if the charge is

¹ §§ 39-23-102(23) and 713(1)(a), C.R.S.

² § 39-26-104(1)(a), C.R.S.

³ §§ 39-26-102(7)(a) and 102(5), C.R.S. See also Department Rule 39-26-102.7(a)

⁴ For the purpose of this General Information Letter, we do not distinguish advance payments designated as “reservation fees,” that will ultimately be applied toward the rental charge, from advance payments designated as “rental charges” at the time of payment. The discussion in this letter applies to advance payments of either designation.

⁵ §§ 39-26-102(11) and 104(1)(f), C.R.S.

⁶ Department Rule 1 CCR 201-4, 39-26-104.1(f)

greater than 50% of the daily reservation rate.⁷ Forfeited deposits that are less than 50% of the daily reservation room rate are classified as cancellation charges and are not subject to tax.⁸

We would expect similar logic to govern advance payments for vehicle rentals. Like the rental of hotel rooms, the rental of motor vehicles is taxable. Any advance payment applied toward the charge for such rental is taxable. Additionally, when a nonrefundable advance payment that exceeds 50% of the daily rental charge for the vehicle is forfeited due to cancellation or the customer's failure to appear at the scheduled time, we would expect it to be properly classifiable as a charge for the rental of the vehicle and therefore taxable as well. Conversely, a nonrefundable advance payment of 50% or less of the daily rental charge would likely be considered a nontaxable cancellation charge if it was forfeited due to cancellation.

Consequently, it would seem appropriate to collect sales tax on any nonrefundable advance payment that exceeds 50% of the daily rental charge at the time the nonrefundable advance payment is made. Such nonrefundable advance payment is taxable either in its application toward the charge for the ultimate vehicle rental or as a forfeited deposit if the vehicle rental is cancelled, either explicitly or by the customer's failure to appear at the designated time.

By contrast, tax likely need not be collected with advance payments that are refundable⁹ or that are 50% or less of the daily vehicle rental fee. Tax applicable to these types of advance payments can be collected at the time when the vehicle is rented and the customer pays any remaining balance for the rental charge. If nonrefundable advance payments that are less than 50% of the daily rental fee are forfeited by either explicit cancellation or failure to appear, they would likely be considered cancellation charges not subject to tax. Similarly, if a refundable advance payment is refunded due to cancellation, no tax is due and any collected tax should be refunded.

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

⁷ Department Rule 1 CCR 201-5, SR-22

⁸ Department Rule 1 CCR 201-5, SR-22

⁹ For practical reasons, Company may prefer and elect to collect tax at the time a refundable advance payment is made. If the reservation is cancelled and the advance payment is refunded, the collected tax should be refunded in the same manner.

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

Sincerely,

Ken Schade
Colorado Department of Revenue
Office of Tax Policy Analysis