



COLORADO

Department of Revenue

Taxation Division

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GIL-2008-037

December 29, 2008

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Use tax exemption

Dear XXXXXXXXXXXX,

This letter is in response to your request for a general information letter concerning the applicability of sales or use tax and registration fees on corporate owned motor vehicles. This letter is issued pursuant to Department Regulation 24-35-103.5. The guidance provided in this letter is not binding on the department.

Issue

1. Is an Oregon corporation that purchased an aircraft in Oregon and uses it in Colorado for 4 days per month exempt from Colorado sales and use tax pursuant to §39-26-713(2)(c), C.R.S.?
2. Is a Colorado resident who owns a home in Florida and purchases, uses, registers, and stores a vehicle in Florida subject to Colorado sales or use tax and registration fees if the vehicle is used in Colorado for less than 48 hours?
3. Are two Colorado residents who are members of a Montana limited liability company that purchases and registers a motor vehicle in Montana subject to Colorado sales or use tax and registration fees?

Background

You have requested guidance on the applicability of Colorado sales and use tax and Colorado registration fees for three scenarios.

Scenario No. 1. A corporate entity domiciled in Oregon purchases an aircraft in Oregon, stores the aircraft in Oregon, and flies the aircraft into and out of airports throughout the United States. The corporation has no physical presence in Colorado, but flies into Colorado twice a month to call on customers. The aircraft is never in Colorado for more than 48 hours.

Scenario No. 2. A Colorado resident individual owns a vacation home in Florida, and purchases, uses, and registers a vehicle in Florida. The individual drives the vehicle from

Florida to Colorado to pick up family members in Colorado and then returns to Florida. The vehicle is in Colorado for less than 48 hours.

Scenario No. 3. Two Colorado residents form and serve as members of a Montana LLC. A Montana law firm serves as manager and registered agent for the LLC. The LLC acquires a motor vehicle (a motor home) in Montana and the LLC registers the vehicle in Montana. The members use the vehicle to travel across the United States, entering Colorado only temporarily while in transit to destinations in other states. The vehicle never spends more than 30 days at a time in Colorado, and never spends more than 6 months in the aggregate in Colorado during any given year.

Discussion

Scenario No. 1

Colorado levies sales tax on the sale or lease of tangible personal property and use tax on the use and storage of such property in Colorado. See, generally, §§39-26-104(1)(a) and 202(1)(a), C.R.S. You ask whether a corporation is exempt from such tax pursuant to §39-26-713(2)(c), C.R.S., which states in relevant part,

The following shall be exempt from taxation under the provisions of part 2 [use tax] of this article:

...

(2)(c) The storage, use, or consumption of tangible personal property brought into this state by a nonresident for his or her own storage, use, or consumption while temporarily within this state.

The exemption of §713(2)(c) applies only to individuals, not corporations. Individuals, not corporations, are either residents or nonresidents. Corporations incorporated in this state are referred to as “domestic” corporations and corporations incorporated in another state are referred to as “foreign” corporations. See, e.g., §39-22-522(1), C.R.S., §39-22-103(3), (5), and (6), C.R.S., §35-75-202(6) and (7), C.R.S., § 39-22-514(12)(k), C.R.S., §39-22-115(1)(g), C.R.S. (repealed). This construction is reinforced by the references in §713(2)(c) to “his” and “her,” which clearly indicate that the “nonresident” is an individual. This construction is also consistent with the subsequent section of §39-26-713(2)(g), which refers to the exemption for a “nonresident” who is “acquiring residency.” Individuals acquire residency; corporations do not.

We are mindful of *General Motors v. City and County of Denver*, 990 P2d 59 (Colo. 1999) in which the court held that, in construing a municipal ordinance, the term, “nonresident,” applied to corporations. However, and for the reasons noted above, the Colorado statute is clearly distinguishable from the city ordinance.

Thus, the airplane is subject to Colorado use tax, but may claim a credit for sales tax paid, if any, to Oregon.

Scenario No. 2

Subsections 39-26-713(2)(c) and 719(2) do not apply to Scenario No. 2 because these exemptions apply only to nonresidents. The owners of the vehicle are residents. There is no other statutory provision which exempts this use from Colorado use tax. Subsection 42-3-103, C.R.S., which addresses registration requirements of vehicles that are designed primarily for use on highways in this state, does not govern the issue of when sales or use tax is due.

Scenario No. 3.

Subsection 39-26-713(2)(c) does not apply to this scenario to because the owner is not an individual. Moreover, even if this exemption were applied to corporations, operating the vehicle for an aggregate of six months is clearly not temporary. We decline to promulgate a general standard of what constitutes “temporary” in the context of a general information letter. Finally, the scenario outlined in your example raises a question of a sham entity that cannot be addressed in the context of a general information letter.

Finally, this letter does not address the applicability of registration fees. The statute and regulation under which this letter is issued are limited to issues of taxation. Registration fees are not taxes, are not administered by the Division of Taxation, and are administered by the Division of Motor Vehicles.

Pursuant to state law and department regulation 24-35-103.5, noted above, 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. Please feel free to contact me if you have any questions.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue