



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

GIL-14-021

October 9, 2014

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Lease Payments on Vehicles Used in Interstate Commerce

Dear XXXXXXXXXXXX

You submitted on behalf of your client ("Company") a request for guidance on whether certain lease payments for vehicles used in interstate commerce are subject to sales or use tax, and to clarify the procedure to document the exemption.

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 Rule 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 Department Rule 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

- 1) Does the sales or use tax exemption pursuant to §39-26-712(1)(b), C.R.S. (motor vehicles used in interstate commerce) apply to periodic lease payments for certain types of interstate commerce vehicles?
- 2) What affidavit provides sufficient documentation of the sales tax exemption pursuant §39-26-712(1)(b), C.R.S.?

Background

Company A leases truck tractors and semitrailers from Company B. Company A permanently garages the truck tractors and semitrailers at its facility in Colorado. The Department presumes that Company A also services and repairs the truck tractors and semitrailers at such facility. Company A will use the truck tractors and semitrailers throughout the lease term to transport cargo that has a point of origin and/or destination outside of Colorado.

The truck tractors are registered with apportioned license plates obtained through a non-Colorado International Registration Plan (IRP). Colorado is a participating jurisdiction of the IRP and is listed in the IRP cab card for each truck tractor. The trailers are registered with a non-Colorado license plate. All truck tractors and semitrailers Company A leases from Company B will remain permanently licensed and registered outside of Colorado throughout the lease.

Within 30 days of taking delivery of the truck tractors and semitrailers, Company A will operate the truck tractors and semitrailers loaded with cargo to a point outside of Colorado. The truck tractors and semitrailers will be continually used in interstate commerce, moving cargo that has a point of origin and/or destination outside Colorado either between points in Colorado and/or across Colorado state lines. Company represents that the vast majority of the transportation will involve interstate commerce. A shipping document is maintained by Company A to evidence the out-of-state move of each truck tractor and semitrailer.

Discussion

1) *Exemption for Vehicles Used Exclusively Outside Colorado or In Interstate Commerce*

In general, the purchase of a new or used trailer, semitrailer, truck, truck tractor, or truck body for use exclusively outside Colorado or in interstate commerce and delivered by a Colorado manufacturer or dealer within Colorado, driven or moved by the buyer outside the state within thirty days after the delivery date is not subject to the sales tax at the time of purchase. The interstate commerce exemption applies to “purchases”.

In this case, Company A does not “purchase” the truck tractors and semitrailers but, rather, leases them. Leases on which sales tax is paid on the lease payments qualify as purchases. A sale/purchase is a transaction in which tangible personal property is exchanged for consideration and the buyer is liable for the tax. A long term lease (more than three years) operates much in the same way as a sale/purchase. A long term lease is the exchange of property for consideration and the lessee must pay sales tax on the lease payment. Thus, long term leases are treated as a sale or purchase.

If the lease term is for three years or less, then the lease payments are not treated as a sale (the lessor is treated as the consumer of the goods), unless the Department gives the lessor permission to collect sales tax on the lease payments. Therefore, the Department will also treat a lease of three years or less as a “purchase” if Company B has permission from the Department to collect sales tax on the lease payments. For leases that are three years or less and Company B does not have permission to collect tax on lease payments, then Company B must pay use tax on its purchase and use of the truck tractors and semitrailer unless the interstate commerce exemption applies.

Although these vehicles are not used “exclusively outside Colorado”, they are apparently used in “interstate commerce” and are driven outside Colorado within thirty days. Unlike the exemption for “use exclusively outside Colorado”, this portion of the exemption applies even if the trucks or trailers have an originating or terminating point in Colorado because this is interstate commerce. However, the Department has interpreted this provision to mean that the vehicle must not only be used in interstate commerce but that it be correctly registered outside Colorado. Because Company A permanently garages, services and repairs, the truck tractors and semitrailers at its facility in Colorado, it would appear that the base of operation for IRP purposes is in Colorado, and, therefore, the vehicles should be registered in Colorado. However, we have not made a determination here whether the vehicles should be registered in Colorado. If the International Registration Plan requires Company A to designate Colorado as its base jurisdiction, the lease payments will likely be subject to sales tax. Finally, the Department may challenge the application of the exemption, even if the vehicles were properly registered in another state pursuant to the IRP and engaged in interstate commerce

only on a part time basis, if Company used the vehicle more than incidentally to provide intrastate transportation services in Colorado.

2) *Affidavit*

Firm notes that Company A will furnish Company B with an affidavit required by §39-26-713, C.R.S. For sales or tax exempt motor vehicle purchases, the Department recommends that purchasers use the DR 0780.

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/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,

Office of Tax Policy
Colorado Department of Revenue