



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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DOR_TaxPolicy@state.co.us

GIL-14-022

October 9, 2014

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Consolidated Freight Charges

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXX (“Company”) a request for guidance to determine whether or not consolidated freight charges are subject to sales or use 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 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

Are consolidated freight charges, if separately stated, subject to sales or use tax?

Background

Company is a provider of retail store fixtures, point of sale displays, workstations and cable trays. Company handles each step of production from product design to quality testing. Company also handles its own distribution operations.

Company is in the process of implementing a new charge (consolidated freight charge). Company defines a consolidated freight charge as a charge for transporting the product from one of Company’s facility to another Company facility for the purpose of consolidating a customer’s order to ship from a single shipping point. The charge is calculated as a percentage of the invoice price for the product to be transferred to another Company plant for shipping consolidation.

Discussion

Colorado levies sales and use tax on the sale, use, consumption, or storage of tangible personal property. The purchase price paid by customers, on which sales tax is computed, includes all costs incurred by the retailer in making a sale. Charges for services that are separable from the sale of the taxable goods are not included in the sales tax calculation. Generally speaking, services that occur after the product is brought to market are generally not included in the computation of tax.

A charge for transportation of tangible personal property between a retailer and a purchaser is generally not included in the calculation of sales tax because the transportation service is rendered after the product is brought to market. This type of transportation charge is generally referred to as a drop shipment. Conversely, a charge for a transportation service rendered prior to the sale is generally included in the computation of sales tax. For example, freight-in charges are typically incurred in connection with transporting tangible personal property from the place of production or manufacture to the seller or to the seller's agent or representative, or to anyone else acting in the seller's behalf, either directly or through a chain of wholesalers or jobbers or other middlemen. Because freight-in charges are for transportation services rendered prior to the sale, these charges are generally included in the computation of sales tax.

If Company's consolidated freight charge genuinely occurs after the product is purchased, then the charge appears to be a drop shipment not subject to tax. However, if Company's consolidated freight charge is assessed regardless of whether a product is being purchased or before the purchase is complete, then the charge appears to be a freight-in charge subject to tax.

More importantly, though, a transportation charge must fairly reflect the cost of transportation. This requirement is imposed to prevent shifting some of the taxable purchase price to non-taxable transportation charges. If the purchase price is not reflective of transportation costs, then the Department will presume that the transportation charge should be included in the sales tax calculation. Transportation costs generally vary based on weight, distance transported, size, volume, delivery time, and other related factors. It is unclear how charging a flat percentage of the total invoice price could properly reflect the cost of transporting / consolidating the customer's products to a single shipping point. Therefore, if Company's consolidated freight charge does not fairly reflect the cost of transportation, the consolidated freight charge is subject to tax.

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