



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

GIL-15-002

January 27, 2015

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Contractor Exemption Certificates

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXXXXX (“Company”) a request for guidance to clarify the application of sales tax to construction and building materials purchased by a contractor or subcontractor.

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

Is the retailer required to refund or credit sales taxes that were paid before an exemption certificate is issued?

Background

Company is a supplier to contractors who provide construction services for tax exempt entities. In some instances, the contractors make purchases from Company when they do not have a tax exemption certificate. Company charges the appropriate taxes until the customer presents Company with an exemption certificate.

Company believes that it should not go back and adjust the taxes on invoices that were billed prior to receipt of the tax exemption documents and that the customer must request a credit and/or refund from the Department.

Discussion

Colorado exempts from taxation all sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by, (1) the United States government, the State of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only, (2) charitable organizations in the conduct of their regular charitable functions and activities, and (3) schools, other than schools held or conducted for private or corporate profit.¹

To facilitate this exemption, the Department issues a contractor (or subcontractor) a certificate of exemption indicating that the contractor's purchase of construction or building materials is for a purpose stated above and is, therefore, exempt from sales or use tax.² The Department provides forms to apply for an exemption certificate³ and has the authority to verify that the contractor is entitled to the issuance of the certificate.

The contractor must present an exemption certificate at the time of purchase. A contractor will generally know well in advance of construction whether the project is entitled to an exemption certificate and will have more than sufficient time to apply for and receive an exemption certificate before purchasing building materials and supplies. If the contractor does not provide a certificate of exemption to the retailer, then the retailer must charge sales tax on the transaction. A retailer who fails to charge sales tax in such instances will be liable for any sales tax that was due as well as penalties and interest. Company should advise the contractor that, if it later obtains an exemption certificate, it may apply to the Department for a tax refund by submitting Department Form 0137.

The retailer may, in its discretion, and after being presented an exemption certificate by the contractor, refund the sales tax to the contractor and claim a credit on its sales tax return.⁴ However, the retailer is not required to refund or credit taxes appropriately charged if the contractor subsequently obtains a certificate.

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.

¹ §39-26-708(1) and §39-26-708(2), C.R.S

² §39-26-708(3), C.R.S

³ To obtain an exemption certificate for each tax-exempt construction project, complete and submit the Contractor Application for Exemption Certificate (DR 0172) to the Department of Revenue.

⁴ §39-26-703(2.5)(b)(I), C.R.S.

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