



**COLORADO**

**Department of Revenue**

Taxation Division

Office of Tax Policy  
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GIL-15-011

July 22, 2015

XXXXXXXXXXXXXXXXXX  
Attn:XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Re: Audio Visual Equipment

Dear XXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance to determine whether audio visual equipment is a building material.

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](http://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.

**Issues**

1. Does the equipment Company sells meet the definition of “construction and building material”?
2. If the equipment does meet the definition of “construction and building material”, does an exemption under the contractor’s exemption certificate apply to such equipment being sold by a retailer to a construction contractor performing a construction project for a tax-exempt entity?

**Background**

Company is an audio visual systems retailer headquartered outside of Colorado, but has employees in a sales and technical service office in Colorado. Company provides audio visual, telepresence, and broadcast systems integration to its customers. It plans, designs, sells, integrates, and services audio visual equipment. Company also offers a wide range of after-sale systems and product support.

The equipment generally purchased from Company includes video monitors, speakers, amplifiers, wireless microphone systems, antennas, video cameras, projectors, video conferencing camera controllers, racking hardware, conductors, cabling, and miscellaneous supplies. The equipment may be placed on wheeled carts to remain portable, or may be bolted to the walls, ceilings, or floors. In

addition to the equipment, the sales agreements may also include systems design, integration labor, and programming.

The following is a detailed description of steps that can be taken in the integration of the equipment:

- If necessary, infrastructure to support the equipment, such as cabling, wood backing for video monitors, speaker, supports, back boxes and floor boxes are sometimes placed behind walls, above ceilings, or in the floors.
- Video monitors are sometimes hung with mounts that are bolted to the walls.
- In some instances, niches are created in the wall to accommodate the size of the video monitors or digital signage panels.
- Speakers are attached with support grid wires.
- Ceiling speakers can be placed in both ceiling tiles and wood ceilings.
- Projectors can be mounted to the ceiling grid and supported with aircraft cable.
- Projection screens may be installed in soffits.
- Equipment racks can be bolted to the floors.
- Cameras can be mounted with bolts to the walls.
- VGA and HDMI input plates can be placed in floor boxes or recessed in the walls.
- Assisted listening and wireless microphone antennas are screwed to the walls.
- Touch panels can be attached to the walls.
- Low voltage cable is routed to each speaker, camera, projector screen, projector, video monitor, and equipment rack.

Company generally sells its equipment to contractors who use lump-sum contracts. Thus, the question at issue is the material is a building material so that the contractor is able to claim the contractor's exemption.

### **Discussion**

In general, the sale of tangible personal property is subject to sales and use taxes.<sup>1</sup> The sale of services are generally not subject to sales taxes unless the services are part of bringing the finished product to market or are an inseparable part of a sale of tangible personal property.

There are two rules that apply to tangible personal property that is installed into real property. The first relates to contractors and whether the contractor uses a lump-sum or time-and-material contract with the real property owner. A contractor who uses a lump-sum contract pays sales tax on building materials and supplies. Sales tax is not assessed on, or collected from, the owner. If the contractor uses a time-and-material contract, then sales tax is paid by the owner and collected by the contractor on the price of the building materials.<sup>2</sup>

Company does not perform the type of work that we have traditionally classified as the work of electricians. We are reluctant to classify installers of audio / visual equipment, entertainment systems, burglar alarms, and similar equipment as construction contractors, primarily because the equipment they install is not considered building materials<sup>3</sup> and the equipment is generally not fixtures of real property. For this reason, we would likely not treat Company as a contractor but as a retailer.

A contractor who purchases tangible personal property that is not a building material will be treated as a retailer who resells the property to the real property owner. In such cases, the contractor must provide a valid exemption certificate to the supplier and purchase the property exempt from sales tax

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<sup>1</sup> § 39-26-104, C.R.S.

<sup>2</sup> 1 CCR 201-5, Special Regulation 10

<sup>3</sup> Building materials are generally materials that are incorporated into the structure to such an extent that they cannot be removed without substantial damage to the structure. The VGA and HDMI input plates appear to be the only material that may be treated as building material if it is permanently attached to the structure. See Department Regulation 1 CCR 201-4: 39-26-102.15.

as a wholesale purchase for resale. The contractor must separately state the price of such materials or equipment, including any mark-up, on the invoice to the owner and collect sales tax on such resales. However, when the real property owner is a tax exempt entity, the contractor does not pay sales tax to the supplier, provided a valid exemption certificate is received by the supplier. In such cases, the contractor does not collect sales tax on the sale of the property to the real property owner because the owner is exempt from 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/tax](http://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 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