



COLORADO

Department of Revenue

Taxation Division

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

GIL-15-013

May 28, 2015

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Asset Acquisition through Foreclosure and Manufacturing Machinery in an Enterprise Zone

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX (“Company”) a question regarding Colorado sales or use tax on assets acquired by foreclosure and whether the purchase of manufacturing machinery is exempt from sales and use taxes.

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 but 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 Regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department treats this request as one for a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If a retailer would like the Department to issue a private letter ruling on the issue raised here, the retailer can resubmit a request and fee in compliance with Department Regulation 24-35-103.5.

Issue

1. Is the purchase of tangible personal property at a foreclosure sale subject to tax?
2. Is the purchase of manufacturing machinery and machine tools used exclusively in an enterprise zone subject to sales tax?

Discussion

Sales tax applies to the retail sale of tangible personal property, unless it is otherwise exempt.¹ The transfer of possession and title from an owner of tangible personal property to a lender, whose loan is secured by a security interest on such property and who obtains possession and title of the property by foreclosing on the secured interest, is not a transaction subject to sales tax.² However,

¹ See, generally, §39-26-104(1), C.R.S.

² See § 39-26-102(10)(j), C.R.S. (a taxable sale does not include the “repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder”).

if the secured party thereafter sells the property to a third party, such as by auction sale, then that sale is subject to sales tax.

Colorado exempts from sales tax sales of manufacturing machinery and machine tools in excess of \$500 used directly and predominantly in Colorado in manufacturing tangible personal property.³ In addition, the manufacturing machinery and machine tools exemption is expanded to include self-constructed equipment, mining and related activities if used solely and exclusively in an enterprise zone.⁴ There are a number of qualifications for the exemption. Machinery and machine tools must meet the qualifications set forth in §§ 39-30-106 and 39-26-709, C.R.S.⁵

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 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

³ § 39-26-709, C.R.S.

⁴ § 39-30-106, C.R.S.

⁵ You can view these statutes at <https://www.colorado.gov/pacific/tax> > Education and Legal Research > Legal Research > Colorado Revised Statutes found near the bottom of the page. Once in LexisNexis, click Colorado Revised Statutes on the left side of the page. These statutes will be found in Title 39, Taxation.