



COLORADO
Department of Revenue
Taxation Division

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

DOR_TaxPolicy@state.co.us

GIL-15-015

June 8, 2015

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Contractor Pay Tax when Billing on a Time-and-Material Contract

Dear XXXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance to determine whether a plumber who bills both lump-sum and time-and-material may pay tax on the materials purchased for each job, even when billing on a time-and-material contract.

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. 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

May a plumber who uses both lump-sum and time-and-material contracts pay sales tax on all tangible personal property used in each contract regardless of the type of contract used?

Background

Company is a plumbing contractor who contracts on both a lump-sum and time-and-material basis. Company would like to pay sales tax when purchasing materials and parts for each job rather than charging customers sales tax. Company purchases materials and parts for contracts at a supply shop that charges sales tax. Company does not mark up such parts or materials when he bills customers.

At times, Company does bill on a time-and-material basis because the customer wants to know exactly what Company is charging for each item or because Company does not give a firm bid or estimate because there were several contingencies for the project. Because Company does not

have a sales tax license, Company cannot purchase the materials at wholesale. In such cases, Company purchases materials and pays the state, county and city sales tax and passes the total cost on to the customer.

Discussion

Colorado has adopted special rules regarding the application of sales and use tax for contractors. Contractors are persons who incorporate tangible personal property into real property. Plumbers are considered contractors if they incorporate tangible personal property into real property. For example, a plumber is a contractor if the plumber installs or repairs water lines in the customer's home. The type of contract the plumber uses determines whether the plumber charges customers sales tax on the tangible personal property or the plumber pays sales tax when the plumber purchases the materials.

Contractors who charges clients lump-sum do not collect sales tax from their customers. Rather, a contractor pays the sales tax on the tangible personal property acquired to complete a contract. Because Company does not have a sales tax license, it must bill all contracts on a lump-sum basis.

In contrast, a contractor who charges clients on a time-and-material basis must collect the sales tax on the amount charged to the customers for the materials. A contractor cannot bill on a time-and-material basis without a sales tax license because the contractor has no means to collect and remit the sale tax to the Department. If Company wishes to charge some customers on a time-and-material basis, Company must obtain from the Department a sales tax license so that it can acquire the materials exempt from tax as wholesale sales and charge the customer for such materials.

Company suggests that because it does not mark up the price of the materials, it is permitted to pay sales tax on the materials it acquires and uses for each contract regardless of the type of contract used. We recognize that requiring Company to collect tax from the customer on the materials may not result in additional tax. However, Company is not permitted to pay sales tax on the materials it acquires to complete a contract when billing on a time-and-material basis. The purpose of the rule is to deal with situations where there is a mark up of the materials. The rule does not make a distinction between contractors that mark up and those that do not. Thus, all contractors are required to follow this rule. However, the contractor regulation is currently under review by the Department and we may consider whether to accommodate this situation by regulation.

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