



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL-15-022

October 15, 2015

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Disposable Bag Fee

Dear XXXXXXXXXXXXXXXX

You submitted on behalf of the XXXXXXXXXXXXXXXX a request for guidance on whether a municipal fee related to disposable bags is included in the sales and use tax calculation for the consumer's purchase of taxable tangible personal property.

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 Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and fee in compliance with Department Regulation 24-35-103.5.

Issue

Is a municipal disposable bag fee included in the sales and use tax calculation for the sale tax of taxable goods purchased by the customer?

Background

XXXXXXXXXXXXXXXXXX, which is a XXXXXXXXXXXXX, imposes a \$.10 fee on each disposable bag used by a retail customer. The fee is levied on the customer and collected by the retailer. The purpose of the fee is to recover a variety of municipal costs associated with the use of such bags, including disposal, public education and production of reusable bags. The Department does not administer the collection of this fee but does administer the collection of sales tax for the state, XXXXXXXXXXXXX and certain special districts located in XXXXXXXXXXXXX.

Discussion

To determine the taxability of the disposable bag fee, we need to determine whether the transfer of the disposable bag from the retailer to the customer who pays the \$.10 fee constitutes a taxable sale of tangible personal property.¹ A taxable sale occurs when there is the transfer of tangible personal property for consideration.² There is certainly a transfer of tangible personal property (bags) from the retailer to the customer as well as a payment of money from the customer to the retailer (i.e., the fee). However, the retailer offers the bag free of charge to the customer. Moreover, the taxable event relating to the bags is when the retailer purchases the bags from the supplier, not when the customer pays for the items that go into the bag. The disposable bag fee is not paid in consideration for the bag, just as the payment of sales tax is not a payment made in consideration for the purchase of a taxable item, although the tax is certainly paid in connection with such purchase. Thus, it appears that the disposable bag fee is not subject to tax because there is no consideration paid, with the exception of the fee, for the disposable bag from the customer to the retailer.

The Department does not administer the sales taxes for XXXXXXXXXXXXXXXX (town) and, therefore, this letter does not address whether the disposable bag fee is included in the calculation of the town's sales taxes.

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

¹ Colorado levies sales tax on the sale of tangible personal property. § 39-26-104(1), C.R.S.
² § 39-26-102(10), C.R.S.