



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL-15-023

October 15, 2015

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Sale-and-Leaseback Transactions

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXX ("Company") a request for guidance on sale-and-leaseback transactions. 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 sale-and-leaseback subject to sales or use tax?

Background

Company purchases taxable tangible personal property from a third party. Company sells the property to a lessor who leases back the property to Company.

Discussion

A sale-and-leaseback typically occurs when a lessee purchases tangible personal property from a retailer, resells the property to a lessor, and the lessor leases back the property to the lessee.

The initial purchase of the property from the retailer by the lessee is exempt from tax as a wholesale sale¹ (i.e., sale for resale) if the lessee purchases the property with the intent to resell the property to the lessor and, in fact, does resell the property without using it.²

The tax obligations of the subsequent sale-and-leaseback transaction hinge on the term of the lease. If the term of the lease is more than three years, the lease is considered a sale (and, thus, a wholesale sale); therefore, the lessor may purchase the property without paying tax and instead collect tax on each lease payment paid by the lessee.³ If the term of the lease is three years or less, the lessor is technically considered the ultimate consumer of the property and must pay tax on the property at acquisition. In turn, the lease payments paid by the lessee are exempt from tax because the lessor has already paid tax on such property.⁴ However, the lessor can avoid being treated as the ultimate consumer and, thus, treat its purchase from the lessee as a non-taxable wholesale purchase for resale by requesting prior approval from the Department to collect tax on lease payments rather than on the acquisition of the property.⁵

Lastly, if the lease is a financing lease and the lessor collects tax on the lease payments but subsequently decides to factor the credit obligation, the remainder of any tax not yet paid by the lessee becomes immediately due.⁶

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 § 39-26-102(19), C.R.S. The Department will presume that a sale is not a wholesale sale if the buyer (whether lessee or lessor) does not have a valid and current retail sales tax license issued by the Department. See Department Regulation 1 CCR 201-4, 39-26-102.19.

² For example, if the lessee purchases the property and uses the property for six months and then decides to resell the property to the lessor, then the lessee's purchase of the property from retailer is taxable even though the lessee later resells the property to the lessor.

³ § 39-26-102(23), C.R.S.

⁴ § 39-26-713(1)(a), C.R.S.

⁵ Ibid. A lessor who would like to purchase the short-term (three years or less) leased property exempt from tax must apply for permission from the Department and, if granted, the lessor must collect sales tax on all its short-term leases. A lessor can make such request by submitting to the Department DR 0440, Permit to Collect Sales Tax on the Rental or Lease Basis which can be found on the Department's website at <https://www.colorado.gov/pacific/tax/forms-number-order>. Such permission is routinely granted.

⁶ See, § 39-26-111(2), C.R.S.