



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

GIL-16-008

June 23, 2016

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Into-Plane Fee

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance regarding the taxability of the into-plane fee charged in association with aircraft refueling.

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 Rule 1 CCR 201-1, 24-35-103.5 at www.colorado.gov/pacific/tax/letter-rulings

The Department treats this request as 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 pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

Is the into-plane fee that Company collects subject to sales tax?

Background

Company sells fuel for aircraft at airports in Colorado. However, Company employs no personnel at these airports to perform refueling services. Instead, Company's customers must contract separately with a fixed-based operator ("FBO") to transport the fuel from the fuel farm where fuel is stored at the airport to the customer's aircraft. The FBOs charge customers an into-plane fee for providing this service. The FBOs also contract with Company to coordinate the provisioning of fuel for their mutual customers. Company collects the into-plane fees on behalf of some, but not all, of the FBOs it contracts with. Other FBOs Company contracts with collect the fees directly from their customers. When Company collects fees on an FBO's behalf, the fee includes no markup and appears separately on the invoice Company issues its customers for fuel.

Structure of Analysis

To determine whether the fee is subject to tax, the Department will examine the following questions:

1. Is the fee a taxable service under § 39-26-104, C.R.S.?
 - a. Is the fee taxable as a service inseparable from the sale of tangible personal property taxable under § 39-26-104(1)(a), C.R.S.?

Discussion

In general, Colorado imposes tax on the sale of tangible personal property, but not on the sale of services.¹ Only a few services are explicitly taxed under Colorado law, and the transportation and dispensation of aviation fuel are not among them. However, fees for services otherwise exempt from taxation may be taxable to the extent that they are inseparably included in the purchase price paid for tangible personal property.² For example, delivery fees a vendor charges may be taxable if the retailer does not separate the charge for the delivery from the price for the taxable goods or if the customer cannot purchase the taxable goods without also purchasing transportation services from the same vendor.³

The taxability of services inseparably included in the sale of tangible personal property results from the inclusion of the service and the property in a single transaction between buyer and seller.⁴ It is only by virtue of this transactional unity that the otherwise nontaxable service becomes taxable. The into-plane fee may then only become taxable if it is not separable from the taxable sale of aviation fuel.

Even though the into-plane fee is charged and collected by Company pursuant to the agreement with the FOB, the fee appears to be a separate transaction from the purchase of the fuel. Because the customer must engage in two separate transactions (purchasing fuel and purchasing the service to have the fuel inserted into the plane), covered by two separate contracts, with two separate entities (Company and the FBO), the transactions are separable. If the customer had to only engage Company to purchase the fuel and purchase the service to have the fuel inserted into the plane, the total price charged by Company would be subject to tax because, although the into-plane charge is separately stated, it would not be separable from the sale of the fuel.

Because the customer must contract separately with two entities, these transactions are separable. The collection of payment for the charges associated with the into-plane fee and the fuel through a single invoice appears insufficient to unify these transactions into one. Rather, the two charges represent two separate sales - a taxable sale of fuel⁵ and a nontaxable sale of services - their common appearance on a single invoice notwithstanding. As a result, the into-plane fee in this case appears not to be subject to Colorado sales tax.

Miscellaneous

¹ § 39-26-104(1)(a), C.R.S.; *A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 19 P.3d 680 (Colo. 2001).

² *A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 19 P.3d 680 (Colo. 2001), *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361 (Colo. 2003), *Noble Energy v. Colo. Dept. of Rev.*, 232 P.3d 293 (Colo. App. 2010).

³ Department Rule 1 CCR 201-5, SR-18

⁴ See *A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 19 P.3d 680 (Colo. 2001). The Department conceded that otherwise nontaxable alteration services would only be taxable if they were contracted for at the time of the initial purchase.

⁵ Department Rule 1 CCR 201-4, 39-26-715.1(a). Aviation jet fuel sales are subject to sales tax.

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