



COLORADO

Department of Revenue

Taxation Division

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

DOR_TaxPolicy@state.co.us

GIL-16-021 (AMENDED)

March 28, 2018

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX
XXXXXX

Re: Paint Stewardship Fee

Dear XXXXXX,

You submitted on behalf of XXXXXX (“Company”) a request for guidance to determine whether the paint stewardship fee is included in the calculation of sales tax on the sale of architectural paint.

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.

The Department issued a General Information Letter to you dated November 28, 2016 in response to your request for guidance. The Department has had an opportunity to review the letter and issues this amended letter, which clarifies that the fee is not taxable if the sale of architectural paint is exempt from tax and deletes, as unnecessary, a portion of the Discussion section relating to other similar guidance. Other than the clarification noted above, this amendment does not alter the guidance provided in the letter.

Issue

Is the fee that is required pursuant to § 25-17-404(2)(j), C.R.S. included in the purchase price for architectural paint?

Background

Colorado enacted a paint stewardship program that requires retailers of architectural paint to collect a fee on the sale of such paint.¹ Company requests guidance whether such fee is included in the calculation of sales tax.

Structure of Analysis

To determine whether the fee is included in the calculation of sales tax, the Department will examine the following question:

1. Is the fee part of the purchase price paid by the consumer for the purchase of tangible personal property pursuant to §§ 39-26-104(1), 102(7), and §25-17-406(2), C.R.S.?

Discussion

Colorado levies sales tax on the sale of tangible personal property, including paint.² Sales tax is calculated on the “purchase price.”³ Purchase price means “[t]he amount of money received or due in cash and credits paid by the consumer.”⁴ The paint stewardship fee is money paid by the consumer to the retailer and, therefore, is included as part of the purchase price. Moreover, the statute governing the architectural paint fee expressly states that the fee is part of the purchase price.⁵ However, if the sale of architectural paint is exempt from tax, such as a sale to a government entity, then sales tax is not applied to the fee.

For these reasons, the state’s paint stewardship fee is included in the sales tax calculation for the sale of architectural paint.

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.

¹ § 25-17-401, et seq., C.R.S.

² § 39-26-104(1), C.R.S.

³ Ibid

⁴ Department Rule 1 CCR 201-4, 39-26-102.7(a)

⁵ § 25-17-406(2), C.R.S. (“For each container of architectural paint sold in Colorado, a retailer shall add the amount of the producer’s paint stewardship assessment, established under section 25-17-404(2)(j), to the purchase price of the container of architectural paint.”)

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



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

GIL-16-021

November 28, 2016

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXXX
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Re: Paint Stewardship Fee

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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.

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

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Structure of Analysis

To determine whether the fee is included in the calculation of sales tax, the Department will examine the following question:

1. Is the fee part of the purchase price paid by the consumer for the purchase of tangible personal property pursuant to §§ 39-26-104(1), 102(7), and §25-17-406(2), C.R.S.?

Discussion

Colorado levies sales tax on the sale of tangible personal property, including paint.² Sales tax is calculated on the “purchase price.”³ Purchase price means “[t]he amount of money received or due in cash and credits paid by the consumer.”⁴ The paint stewardship fee is money paid by the consumer to the retailer and, therefore, is part of the purchase price. Moreover, the statute governing the architectural paint fee expressly states that the fee is part of the purchase price.⁵

More generally, the legislature defines purchase price to exclude direct federal taxes but does not exclude government fees.⁶ For example, government fees related to the provisioning of telephone services, such as the Colorado High Cost Service Charge and County 911 surcharges, are collected by the telephone company from the customer. These fees are included in the calculation of sales tax applicable to telephone service because these fees are not, as noted above, expressly excluded from the definition of purchase price.⁷

Moreover, a retailer cannot exclude these fees from the calculation of sales by separately stating the fee on the customer’s invoice. Consistent with this view, the department has previously ruled in analogous circumstances that the state business personal property tax on property leased by a lessor to a lessee is part of the lease payment on which sales tax is collected, even if the lessor separately states the property tax in the lease contract.⁸

For these reasons, the state’s paint stewardship fee is included in the sales tax calculation for the sale of architectural paint.

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.

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⁶ § 39-26-102(7), C.R.S.

⁷ FYI Sales 80 Telephone and Telecommunications

⁸ Colorado Revenue Bulletin 99-19

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Sincerely,

Neil L. Tillquist
Colorado Department of Revenue
Office of Tax Policy Analysis