



COLORADO

Department of Revenue

Taxation Division

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

DOR_TaxPolicy@state.co.us

GIL-17-017

August 22, 2017

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Re: Core charge

Dear XXXXXX,

You submitted on behalf of XXXXXX (“Company”) a request for guidance on the application of sales tax to core charges.

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

1. Does Colorado sales tax apply to a separately stated charge (known as a “core charge”) associated with an automotive part that has the capacity to be recycled, refurbished or remanufactured to a useful state?

Background

Company provides tax guidance to its clients and requests guidance on the application of sales tax to “core charges” used by some clients. Company defines a core charge as “a separately stated charge associated with an automotive part that has the capacity to be recycled, refurbished or remanufactured to a useful state.” The retailer assesses the core charge when an automotive part is

purchased and pays the core charge when the customer returns the used auto part. For example, a customer may purchase a car battery and pay the core charge and, when the battery is depleted, the retailer will pay the core charge to the customer either as a credit against the purchase price for a new battery or as a cash payment not paid in connection with a purchase.

Discussion

Sales tax is calculated on the price paid by customers.¹ The core charge is part of the purchase price paid by the customer for the purchase of the automotive part and, therefore, the charge is included in the calculation of sales tax, even if it is separately stated.²

When a customer brings a used automotive part back to the retailer, the retailer's payment for the used part (i.e., the core charge) is a separate sale from the original sale of the part by the retailer to the customer.³ The retailer, not the customer, is liable for sales tax on the purchase of the used part, unless the transaction is otherwise exempt.⁴

The retailer's purchase of the used part may not be taxable if the transaction qualifies as a "trade-in."⁵ If a retailer accepts a used part in exchange for, and as part consideration for, the sale of taxable tangible personal property (e.g., a new automotive part) to the customer, then the core charge reduces the price on which sale tax is calculated on the purchase, but only if the retailer resells the used part in the usual course of the retailer's business. If the retailer does not resell the property in the usual course of its business, the retailer's purchase of the trade-in is taxable.

We considered whether the core charge qualifies as a refund of the purchase price. In general, sales and use taxes are transactional taxes and the full amount of the tax is due once the taxable event (either a sale or use) occurs, even if the buyer ultimately does not fully consume the product or resells the product shortly after purchasing the product. An exception to this rule applies when a customer returns a previously purchased item and the retailer refunds the full purchase price. However, the retailer must refund the "full" purchase price in order to qualify for the tax refund.⁶ A refund of tax is not appropriate where a customer has made any significant use of a product.⁷ The core charge is not a refund of the full purchase price of the original part and, therefore, a refund of any tax is

¹ §39-26-104 and 102(7), C.R.S.

² The core charge is not separable from the sale of the automotive part. The core charge is separately stated presumably so customers understand the price retailers will pay for the used parts.

³ A sale is the transfer of tangible personal property for consideration. 39-26-102(10), C.R.S.

⁴ The retailer's purchase of the used part may be exempt as the sale of a component part used in the manufacturing of tangible personal property if the retailer refurbishes the used part and if refurbishing qualifies as manufacturing. §39-26-102(21), C.R.S. The retailer's purchase may also not be taxable if the retailer resells the used part (i.e., a wholesale purchase for resale).

⁵ §39-26-102(7)(a), C.R.S.

⁶ §39-26-102(12), C.R.S.

⁷ See, Department General Information Letter (GIL)2007-21 (a refund of tax is inappropriate where the buyer has used the property before returning it to the retailer for a refund)

inappropriate.

We understand that some tax jurisdictions treat the core charge as a deposit on a returnable product and permit the retailer to refund the sales tax calculated on the core charge once the used part is transferred to the retailer. There is no statutory provision that expressly governs deposits, but Department Special Regulation 9⁸ states, in part, that “deposits” paid on “returnable containers” are not subject to sales tax. This regulation does not apply to the returnable parts at issue here because the automotive parts are not containers.

Moreover, it is inappropriate to extend the rationale underlying Special Regulation 9 to core charges. The deposit exemption in the regulation is based on the decision in *Department of Revenue v. Adolph Coors Company*, 724 P2d 1341 (Colo. 1986) in which the court held that deposits paid to beer retailers by customers who purchased beer sold in large returnable steel beer kegs are not included in the calculation of the sales tax on the beer because the kegs were owned by the retailer and the deposits were viewed as security to ensure the return of the kegs rather than as consideration for the sale of the kegs. The core charge is not a security deposit to ensure that the customer returns the used automotive parts.

The core charge is a contractual agreement by the retailer to purchase the used parts from its customers. It is more appropriate to view the core charge as a marketing program that encourages customers to sell the used part to the retailer rather than to a scrap metal dealer or dispose of it in a landfill. It is worth noting that had the consumer sold the used automotive part to a third party, such as a scrap metal dealer or a retailer of used parts, the sale would clearly be taxable.⁹ There is no rational basis for concluding that the tax result should be any different if the consumer sells the used part to the original retailer.

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

⁸ 1 CCR-201-5, Special Regulation 9

⁹ Sales by the consumer to a third party may be entitled to an exemption, such as the exemption for a component used in the manufacturing of tangible personal property or as a non-taxable wholesale purchase for resale.

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