



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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DOR_TaxPolicy@state.co.us

GIL-17-018

August 29, 2017

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Re: Exemption for Silviculture Equipment

Dear XXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance relating to the applicability of the exemption set forth in §39-26-716, C.R.S..

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

Is the sale and lease of silviculture equipment exempt from sales and use tax pursuant to §39-26-716, C.R.S.?

Background

Company is a vendor / lessor of heavy equipment that is used by customers who are in the business of cutting and removing timber from the land. These customers use the equipment to perform such tasks as cutting down the trees,

dragging them to terminal points, and loading them onto trucks for transport. For example, a “feller” uses a metal extension to hug the tree while it is being cut from below by an attached circular saw. Another item of equipment, a “skidder,” uses an extension to grab trees piled together by the “feller” and drag them to a clearing. The items move by large tires or tracks and are designed to operate in dense, uneven terrain.

Discussion

Colorado exempts from sales and use taxes certain farm equipment described in §39-26-716(2)(b) and (c), C.R.S.. Subsection (2)(b) exempts all sales and purchases of “farm equipment.”¹ “Farm equipment” is defined in subsection (1)(d) to include “any implement of husbandry”, as defined in section §42-1-102(44), C.R.S.” The definition of “implements of husbandry” states, in part: “Effective July 1, 2013, for purposes of this section, ‘implements of husbandry’ includes personal property valued by the county assessor as silvicultural.” Silviculture is the growing and production of trees. Although this 2013 amendment was enacted after the enactment of section 716, it, nevertheless, is incorporated into the exemption in subsection 716(2)(b).²

Moreover, “implements of husbandry” includes “agricultural commodity” handling equipment. “Agricultural commodity” is defined in the sales tax statute to include timber and timber products.³ The definition of “agricultural commodity” was added to the sales tax statute in 2000 in the same legislation (HB 00-1162) that added “agricultural commodity handling equipment” to the definition of “implements of husbandry” in the motor vehicle registration statutes, suggesting that implements of husbandry included timber and timber products handling equipment beginning in 2000. The 2013 amendment adding silviculture to the definition of implements of husbandry limits the exemption to equipment “valued by the county assessor” as silviculture equipment.

Therefore, timber and timber product handling equipment purchased after 2013 and valued by the county assessor as silvicultural equipment likely qualifies for the exemption pursuant to subsection 716(2)(b).⁴

Company also requests guidance on whether leasing (as opposed to transferring title to) the equipment qualifies for the exemption under subsection (2)(c), which exempts “any farm equipment under lease or contract, if the fair market value of the equipment is at least one thousand dollars and the equipment is rented or

¹ Equipment that must be registered pursuant to §42-3-103, C.R.S. does not qualify for the exemption set forth in section 716. We assume for purposes of discussion that Company’s equipment is not required to be registered.

² §2-4-209, C.R.S. See also, *People v. Jones*, 346 P.3d 44 (Colo. 2015) overruling *School District No. 1 v. Hastings*, 220 P2d 361 (Colo. 1959) and implicitly overruling *Arrington v. Arrington*, 618 P.2d 744 (Colo. App. 1980) (amendments to a statute that is specifically referenced by another statute are not incorporated into the referencing statute).

³ §39-26-102(1), C.R.S.

⁴ This letter does not address the application of section 716 to silviculture equipment purchased before 2013 because the three year statute of limitations for claiming a refund of taxes has likely expired and, therefore, the issue is moot. §39-21-108, C.R.S.

leased for use primarily and directly in any farm operation.” We note that there are some differences in language between subsection (2)(b) (exemption for the “sale” of farm equipment) and subsection (2)(c) (exemption for the “lease” of farm equipment).

Specifically, subsection (2)(c) refers to farm equipment used directly and primarily in a “farm operation”. A “farm operation” is defined in subsection (1)(e) as “the production of any of the following products for profit, including, but not limited to, a business that hires out to produce *or harvest such products*: (1) *Agricultural, viticultural, fruit, and vegetable products*.” (emphasis added). Company asserts that timber qualifies as an “agricultural product” and, therefore, its lease of the heavy equipment used to harvest timber qualifies for the exemption under subsection (2)(c). We agree.

Although the common and ordinary meaning of “farm operation” may not encompass state and federal forests, the addition of silviculture to the definition of “implements of husbandry” suggests that the definition of “farm operation” should be more broadly interpreted to include timber grown and harvested on state and federal lands.⁵ The addition of silviculture also implies that “agricultural” products include timber. Finally, and notwithstanding some slight differences in the language, this exemption for “leased” farm equipment in subsection (2)(c) should be read consistently with the exemption for the “sale” of farm equipment in subsection (2)(b) (which does not, at least expressly, limit the exemption to equipment used directly and primarily on “farm operations”).

Therefore, the Department would likely interpret subsection (2)(c) to exempt the lease of equipment that has a market value of at least \$1,000, is used for harvesting timber from state and federal land, and is valued by the county assessor as silviculture personal property.

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

⁵ It is the Department’s understanding that most timber production in Colorado occurs on state and federal lands.

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