



COLORADO
Department of Revenue

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

DOR_TaxPolicy@state.co.us

GIL18-008

June 12, 2018

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Dear XXXXXX,

You submitted a request for guidance on behalf of XXXXXX ("Company") regarding the application of sales tax to charges related to the sale and installation of commercial signs.

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

Does the calculation of sales tax for the sale of a commercial sign include Company's charges for surveying, engineering stamps, administrative permits, and local government permits?

Background

Company sells and installs commercial signs. Company uses a time-and-material contract and separately charges for surveying, local government permits, engineering stamps and administrative permits.

Discussion

Colorado levies sales tax on the sale of tangible personal property, including signs. A retailer¹ typically incurs a variety of costs when bringing goods to market. These costs can

¹ Company arguably is a contractor because the signs may become real property fixtures. The rules for contractors are somewhat different than for the typical retailer. However, a contractor who uses a time-and-material contract, as is the case here, is treated as a typical retailer.

include such things as government permits, engineering drawings, manufacturing labor and materials, and freight-in transportation costs. These costs are included in the calculation of sales tax even if the retailer separately states a price for these costs.²

In some cases, the sale of goods also involves the sale of related services, such as the service of installation of property. If the sale of the service is both separable from the sale of the taxable goods and the price for the service is separately stated, then sales tax is calculated only on the price of the taxable goods. Although there are a variety of factors that are considered in determining whether the sale of service is separable, the sale of a service is often treated as separable if the buyer has the option not to purchase the service as part of its purchase of the property.³

If the sale of the installation service is separable from the sale of the sign, then charges for services associated with installation are also likely nontaxable. It is not clear in this request for guidance whether the engineering stamp is required only for installation. If it is, then the engineering stamp fee is a nontaxable item if the installation is separable and the prices for installation and the engineering stamp are separately stated. Similarly, if the various permits are required only for installation and the installation is separable from the sale of the signs, then separately stated charges for these permits are also not taxable.⁴ On the other hand, if the engineering stamp and permits are not incurred solely for nontaxable installation services, then these fees are generally included in the calculation of sales tax.⁵

If a service is not separable from the sale of the taxable goods, then a determination must be made as to whether the true object of the transaction is the sale of taxable goods or the sale of a nontaxable service.⁶ One factor that will be considered is whether the tangible personal property is merely incidental to the service. If the property is not merely incidental, the transaction is more likely to be viewed as a sale of taxable property and tax is calculated on the entire price, even if the price for the installation service is separately stated.

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.

² §39-26-102(12), C.R.S.

³ *Noble Energy, Inc. v. Colorado Dept. of Revenue*, 232 P.3d 293, 296-97 (Colo. 2010); *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361, 366 (Colo. 2003)

⁴ GIL 08-027

⁵ Government fees imposed on the buyer but initially paid by the seller and reimbursed by the buyer are generally not included in the calculation of sales tax.

⁶ See, footnote 3.

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