



COLORADO

Department of Revenue

Taxation Division

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

DOR_TaxPolicy@state.co.us

GIL-18-013

November 28, 2018

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Re: Sales tax on food platters and lids

Dear XXXXXX,

You submitted a request for guidance regarding the applicability of sales tax to platters and lids used by a quick serve restaurant ("Company").

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.

Issues

Does sales tax apply to a restaurant's purchase of catering trays and lids that are used by a restaurant to provide sandwich platters to customers?

Background

Company sells sandwich platters. These sandwich platters contain either 15 or 30 pieces of unwrapped, prepared sub sandwiches.

Discussion

In general, Colorado imposes sales tax on retail sales of tangible personal property.¹ A sales tax exemption applies to any article, bag, or container furnished by a food vendor to the consumer if ownership and possession of the article, bag, or container passes to the consumer and the food vendor does not separately charge the consumer for the article, bag, or container.² However, the exemption does not apply to any article, bag, or container that is not essential to the food sale.³

The applicable regulation provides clarification that an article or container is nonessential and therefore taxable “if it is primarily used for the convenience of the consumer and is not necessary to transfer the food to the consumer.”⁴ Among the examples of nonessential articles and containers, the regulation lists “serving trays, platters, and dome lid covers to plates or platters.”⁵

By contrast, “[d]isposable containers or packaging material on, or in which, food is transferred to the consumer” are exempt “if the retailer cannot transfer the food to the consumer without such article or container.”⁶ The regulation includes as examples of exempt items “plates...and lids...on, or in which, unwrapped or unpackaged...prepared food...are served to the consumer.”⁷

Whether a tray, platter, plate, or lid purchased by a food vendor and furnished to a consumer is exempt from taxation depends on whether the tray, platter, plate, or lid is “necessary to transfer the food to the consumer” and whether “the retailer cannot transfer the food to the consumer without” it. If an article is “not necessary to transfer the food to the consumer,” the article is nonessential and subject to taxation. If “the retailer cannot transfer the food to the consumer without” the article, it is exempt from taxation.

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 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 § 39-26-104(1)(a), C.R.S.

² § 39-26-104(1)(c) and (d), C.R.S.

³ § 39-26-104(1)(c) and (d), C.R.S.

⁴ Reg. 39-26-707.1(1)(a), 1 CCR 201-4.

⁵ Reg. 39-26-707.1(1)(a)(i), 1 CCR 201-4.

⁶ Reg. 39-26-707.1(1)(a)(ii), 1 CCR 201-4.

⁷ Reg. 39-26-707.1(1)(a)(ii), 1 CCR 201-4.

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