



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy Analysis

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GIL 21-002

June 4, 2021

XXXXXXXXXX
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Re: Sales and use tax on items given as gifts by a charitable organization

Dear XXXXXXXXXXXX:

You submitted a request for a general information letter regarding sales and use tax on items given as gifts by a charitable organization. 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, and requires payment of a fee. For more information about general information letters and private letter rulings, please see 1 CCR 201-1, Rule 24-35-103.5.

Issue

Is sales or use tax due on items a charitable organization purchases tax-free for resale at a store the organization operates, but then gives away as gifts to potential donors, regular customers, and artists performing at the organization’s venue?

Discussion

Colorado imposes sales tax on retail sales of tangible personal property.¹ In general, a charitable organization that engages in the business of selling at retail in Colorado is considered a retailer and is required to obtain a sales tax license and collect tax on any retail sales it makes.²

However, a bona fide gift of tangible personal property is not considered a sale and sales tax does not apply to the act of giving a gift.³ Instead, the person, business, or organization giving the gift is considered the user and consumer of the property and is liable for sales or use tax.⁴ If the giver did

¹ Section 39-26-104(1)(a), C.R.S.

² See sections 39-26-102(2), -102(2.5), -102(3), -102(8), -102(9), -102(10), -103, -103(9)(a), -105, C.R.S. Sales made by a charitable organization may be exempt from state and state-administered special district sales taxes if the net proceeds from the charitable organization’s annual sales in both the current and prior year are less than \$45,000. Section 39-26-718(1)(b) and (2), C.R.S. However, the exemption generally does not apply to state-administered city and county sales taxes. See Department publication DR 1002, *Colorado Sales/Use Tax Rates* for information about local sales tax exemptions.

³ 1 CCR 201-4, 39-26-102(10).

⁴ 1 CCR 201-5, Special Rule 21.

not pay sales tax when they acquired the property (because, for example, the giver originally purchased the property with the intention of reselling it), the giver is liable for use tax on the item.⁵

A retailer, including any charitable organization engaged in the business of selling at retail, may purchase tangible personal property for resale without paying sales tax at the time of purchase.⁶ However, if the retailer withdraws an item purchased tax-free from inventory for the retailer's own use, the retailer will owe use tax on that item.⁷ The use tax is calculated on the purchase price the retailer paid to acquire the item.⁸ Use tax applies regardless of the manner in which the retailer uses the withdrawn item and regardless of whether the retailer uses the withdrawn item as a gift the retailer gives away.⁹

However, the use of tangible personal property by a charitable organization is generally exempt from use tax, provided the organization uses the property in the conduct of its regular charitable functions and activities.¹⁰ Colorado statute and regulation generally do not prescribe explicit criteria for determining the scope of an organization's regular charitable functions and activities and whether a particular use of property qualifies for exemption depends on the specific facts and circumstances. Department regulation states that the sales tax exemption for charitable organizations does not apply to property a charitable organization transfers to anyone else for personal use if all or part of the price of the good is recouped from the transferee.¹¹ The Department previously noted that "personal use" as it is used in the regulation refers to any use by the transferee that is not exclusively in furtherance of the regular charitable functions and activities of the exempt organization.¹²

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 self-collected home-rule cities. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at Tax.Colorado.gov for more information about state and local sales taxes.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue

⁵ Section 39-26-202(1)(b), C.R.S.

⁶ Sections 39-26-102(9), -102(19), -104(1), and -105(3), C.R.S. See also 1 CCR 201-4, Rule 39-26-105-3.

⁷ Section 39-26-202(1)(b), C.R.S.; 1 CCR 201-4, Rule 39-26-713-3; and *Int'l. Bus. Mach. Corp. v. Charnes*, 601 P.2d 622 (Colo. 1979).

⁸ Sections 39-26-201(1) and -202(1)(b), C.R.S.

⁹ 1 CCR 201-5, Special Rule 21.

¹⁰ Section 39-26-713(2)(d), C.R.S.

¹¹ 1 CCR 201-4, Rule 39-26-718(5).

¹² Private Letter Ruling 20-002. Please note that private letter rulings cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.