



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy Analysis
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GIL 21-005

October 28, 2021

XXXXXXXXXX
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XXXXXXXXXX

Re: Request for general information letter to determine whether guided walking tours are subject to sales and use tax

Dear XXXXXXXXXXXX:

You submitted a request for a general information letter to determine whether guided walking tours are subject to sales and use tax. 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.

Issues

1. Whether guided walking tours are subject to sales and use tax when the purchase price does not include food and beverages consumed at third-party establishments.
2. Whether guided walking tours are subject to sales and use tax when the purchase price includes food and beverages consumed during a tour stop at a third-party establishment.
3. Whether a guided walking tour operator may purchase food and beverages consumed during a tour at a third-party establishment tax free with a resale certificate.

Discussion

Colorado imposes a sales tax on retail sales of tangible personal property, prepared food or drink, and certain services.¹ Colorado does not generally impose sales tax on services, only

¹ Section 39-26-104(1), C.R.S.

those services specifically included in the statute.² Guided walking tours are not among the services explicitly subject to tax.

Excluded services may be subject to sales tax if they are provided as part of a transaction involving the sale of taxable tangible personal property, commodities, and services.³ Charges for excluded services are subject to sales tax unless the service is separable from the taxable sale and the service charge is separately stated from the sales price of the otherwise-taxable portion of the sale.⁴ Colorado sales tax is imposed upon the retail sale of food or drink served or furnished in or by dining establishments and other like places of business at which prepared food or drink is regularly sold.⁵

Every sale that is not a wholesale sale is a retail sale.⁶ A wholesale sale is a sale by a wholesaler to a retailer, jobber, dealer, or other wholesaler for the purpose of resale.⁷ A retailer is required to collect sales tax on any retail sale of tangible personal property, prepared food or drink, or taxable service made in Colorado if the retailer is doing business in Colorado.⁸ The term “retailer” broadly encompasses any person engaged in the business of selling to the user or consumer, and not selling for resale.⁹

A retailer may purchase food or drink without paying sales tax at the time of the purchase if the retailer then sells the food or drink to consumers in a separately taxable transaction.¹⁰ Such a purchase would be classified as a wholesale sale to a retailer and would be exempt from the sales tax as a wholesale sale.¹¹

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 municipalities. You are encouraged 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

² *A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 19 P.3d 680 (Colo. 2001).

³ 1 CCR 201-4, Rule 39-26-102(12); *A.D. Store*, 19 P.3d at 683.

⁴ 1 CCR 201-4, Rule 39-26-102(12); 1 CCR 201-4, Rule 39-26-102(7)(a)(5); *A.D. Store*, 19 P.3d at 683-84.

⁵ Section 39-26-104(1)(e), C.R.S.; 1 CCR 201-4, Rule 39-26-102(4.5)(1)(b)(4).

⁶ Section 39-26-102(9), C.R.S.

⁷ Sections 39-26-102(18) and (19), C.R.S.

⁸ Section 39-26-105, 39-26-106(2)(a), C.R.S.

⁹ Section 39-26-102(8), C.R.S.

¹⁰ Sections 39-26-102(9), 39-26-102(19), 39-26-104(1)(a), 39-26-105(3)(a), C.R.S.; see also 1 CCR 201-4, Rule 39-26-105(3).

¹¹ Section 39-26-102(19), C.R.S.

GIL 21-005
October 28, 2021
Page 3

information about state and local sales taxes.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue