



COLORADO
Department of Revenue

Taxation Division

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GIL 22-004

May 5, 2022

XXXXXXXXXX
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Re: Surcharges on Credit Transactions

Dear XXXXXXXXXXXX:

You submitted a request for a general information letter regarding the applicability of Colorado sales tax to surcharges on credit transactions. 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

Whether the purchase price for Colorado sales tax purposes includes surcharges on credit transactions imposed in accordance with section 5-2-212, C.R.S., thus subjecting the surcharges to sales tax.

Discussion

Colorado imposes a sales tax on retail sales of tangible personal property.¹ The tax is imposed upon the purchase price paid or charged.² The taxable “purchase price” is the price to the consumer, and includes the entire amount of money received or due in cash and credits.³

When Senate Bill 21-091 takes effect on July 1, 2022, section 5-2-212, C.R.S., will permit a seller or lessor to impose a surcharge on a buyer or lessee who elects to use a credit or charge card in lieu of payment by cash, check, or similar means.⁴ Imposition of the surcharge will be subject to certain conditions.⁵ For instance, a seller or lessor may not impose a surcharge if the customer elects to pay by cash, check, debit card, debit payment, or gift card.⁶ Furthermore, the seller or lessor must provide the surcharge amount as a separate line item on the customer’s receipt.⁷

¹ Section 39-26-104(1)(a), C.R.S.

² *Id.*

³ Section 39-26-102(7)(a), C.R.S.; 1 CCR 201-4, Rule 39-26-102(7)(a), paragraph (1).

⁴ 2021 Colo. Sess. Laws 3404; Section 5-2-212 (1)(a), C.R.S. (effective July 1, 2022). References in this letter to section 5-2-212, C.R.S. are to that section as amended by Senate Bill 21-091.

⁵ This letter discusses, in a general fashion, only those conditions relevant to this issue. Refer to section 5-2-212, C.R.S., and related statutes and rules, for a complete understanding of the requirements and restrictions.

⁶ Section 5-2-212(1)(e), C.R.S.

⁷ *Id.* at (1)(d).

In some cases, amounts charged in connection with the retail sale of tangible personal property are not part of the taxable purchase price. For instance, the taxable purchase price generally excludes separately stated interest and finance charges.⁸ Similarly, transportation charges are not part of the taxable purchase price if they are both separable from the sales transaction and stated separately on a written invoice or contract.⁹

The rule for transportation charges sets forth several rules useful for analyzing this issue. First, the charge must be separable from the sales transaction.¹⁰ Charges are separable if they are performed after the taxable property is offered for sale and the seller allows the purchaser to elect the seller's transportation services (and incur the charge) or some alternative including self-pickup (and avoid the charge).¹¹ Second, the charge must be separately stated.¹² Separate statement requires that the charges be set forth separately on a written document issued in connection with the sale.¹³ Finally, the rule prohibits a retailer from shifting part of the actual sales price to the transportation charge in order to avoid the sales tax.¹⁴

As noted above, a seller or lessor may not impose a surcharge if the customer elects to pay by cash, check, debit card, debit payment, or gift card. Furthermore, the seller or lessor must provide the surcharge amount as a separate line item on the customer's receipt. Therefore, surcharges that comply with the statutory requirements, and are not used to shift part of the actual sales price to the surcharge, are not part of the taxable purchase price.

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.

Thank you for your request.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

⁸ 1 CCR 201-4, Rule 39-26-102(7)(a), paragraph (4).

⁹ 1 CCR 201-5, Special Rule 18, paragraph (1).

¹⁰ *Id.* at (1)(b).

¹¹ *Id.*

¹² *Id.* at (1)(c).

¹³ *Id.*

¹⁴ *Id.* at (1)(e).