



COLORADO
Department of Revenue
 Taxation Division
 Office of Tax Policy
 P.O. Box 17087
 Denver, CO 80217-0087
 dor_taxpolicy@state.co.us

GIL 23-001

June 22, 2023

XXXXXXXXXXXXX
 XXXXXXXXXXXXX
 XXXXXXXXXXXXX

Via Electronic Mail: XXXXXXXXXXXXX

Re: Sales Tax on Tips in a Dining Establishment

Dear XXXXXXXX:

You submitted a request for a general information letter regarding sales tax on tips in a dining establishment. 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 tips in a tip pooling arrangement are subject to sales tax as part of the amount paid at a dining establishment.
2. Whether mandatory tips that cannot be removed by the customer are subject to sales tax as part of the amount paid at a dining establishment.
3. Whether prepopulated tips that can be removed by the customer at the point of sale are subject to sales tax as part of the amount paid at a dining establishment.

Discussion

Colorado imposes a sales tax upon the amount paid for 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.¹ The amount paid does not include gratuities such as cash tips, charge tips, banquet tips, and tips separately stated and added to the sales check by the vendor when the total amount of the gratuity is distributed to persons who actually render the service.²

¹ Section 39-26-104(1)(e), C.R.S.
² 1 CCR 201-4, Rule 39-26-104–6; 1 CCR 201-5, Special Rule 13.

A Colorado employer who pools tips must inform its customers “in writing, including by a notice on a menu, table tent, or receipt, that gratuities are shared by employees.”³ Pooled tips at a dining establishment would not be subject to sales tax if the full amount of the gratuity is distributed to the persons who actually render the service.⁴ If any portion of the tips from a tip pooling arrangement at a dining establishment is retained by the employer or distributed to an employee who is not rendering service to customers, the entire tip pool is then subject to sales tax. Employees who actually render service may be wait staff, bartenders, or, in the case of a dining establishment with counter service only, an employee who prepares and serves the food to the customer.⁵

Tips at a dining establishment that are added by the vendor, whether described as a tip or gratuity, may be subject to sales tax as part of the amount paid. Special Rule 13 does not define the terms “gratuity” or “tip,” which are synonyms. The dictionary definition of “gratuity” is “something given voluntarily or beyond obligation usually for some service, especially: tip.”⁶ A vendor may automatically add a tip at a flat rate to a customer’s check.⁷ However, if a customer cannot remove or amend the charge, then the charge is not a “tip” or a “gratuity” within the meaning of the rule, and it is subject to sales tax.⁸

Prepopulated tips that can be removed by the customer at the point of sale at a dining establishment are not subject to sales tax, if the prepopulated tip is a cash tip, a charge tip, a banquet tip, or a tip separately stated and added to the sales check by the vendor. As discussed above, the amount must be distributed by the vendor to the persons who actually render the service.⁹

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

³ Section 8-4-103(6), C.R.S. See also Colorado Department of Labor and Employment, Division of Labor Standards and Practices, Interpretive Notice & Formal Opinion (“INFO”) #3, revised February 10, 2023: <https://cdle.colorado.gov/sites/cdle/files/INFO%20%233%20Tips%20%26%20Tipped%20Employees%20Revised%20Feb%2010%202023.pdf>

⁴ 1 CCR 201-5, Special Rule 13.

⁵ 29 C.F.R. §531.56(f)(2)(ii).

⁶ Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/gratuity> (last visited Jun. 12, 2023).

⁷ 1 CCR 201-4, Rule 39-26-104–6; 1 CCR 201-5, Special Rule 13. For example, a restaurant may add an automatic 15% gratuity.

⁸ 1 CCR 201-4, Rule 39-26-104–6; 1 CCR 201-5, Special Rule 13.

⁹ *Id.*