



COLORADO

Department of Revenue

Taxation Division

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

DOR_TaxPolicy@state.co.us

PLR-17-002

May 3, 2017

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Lease of Space on Telecommunications Towers

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX (“Company”) a request for a private letter ruling to the Colorado Department of Revenue (“Department”) pursuant to Department Rule 1 CCR 201-1, 24-35-103.5. This letter is the Department’s private letter ruling. This ruling is binding on the Department to the extent set forth in Department Rule 1 CCR 201-1, 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

Is the lease of space on Company’s telecommunication towers subject to sales or use tax?

Conclusion

The lease of space on Company’s telecommunication towers is subject to sales and use tax.

Background

Company is in the business of constructing telecommunication towers and leasing the towers to third parties that install telecommunication equipment on the towers. Company acquires the site on which the towers are constructed either by purchasing land from the landowner or entering into a ground lease with the real property owner. The ground lease is typically for a five-year period and requires Company to restore the land to its original condition after the ground lease expires. After the tower has been constructed or installed, Company then leases space on the tower to its customers who attach various types of telecommunication equipment.

Company classifies its towers located in Colorado as tangible personal property and depreciates them over a 15-year period for both accounting and federal income tax purposes. In some states where Company does business, Company classifies the towers as real property.

Structure of Analysis

To determine whether sales or use tax is due, the Department will examine the following question:

1. Is Company's lease of space on telecommunication towers the lease of tangible personal property pursuant to §§39-26-104 and 102(23), C.R.S.?

Discussion

Colorado imposes sales and use tax on a lease¹ of tangible personal property, but not on the lease of real property.² There is some debate about whether telecommunication towers themselves constitute real or tangible personal property.³ The Colorado legislature has classified these towers as tangible personal property for purposes of Colorado business property tax.⁴ Although the property tax statute does not govern the application of sales and use taxes, these two tax statutes have been interpreted to achieve consistency when possible.⁵

For this reason, we conclude that Company's leases of space on the towers are for tangible personal property and, therefore, customer's lease payments for the use of the space on the towers are subject to state and state-administered sales or use taxes.

Miscellaneous

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and 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/revenue/tax for more information about state and local sales taxes.

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. This ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter.

¹ § 39-26-102(23), C.R.S. (long term leases are for more than three years). If the lease is for three years or less, then the lessor must pay sales or use tax when it acquires the property unless the lessor obtains the department's permission to purchase the property exempt of tax and collect tax on lease payments. §39-26-713(1)(a), C.R.S. If the lease is for more than three years, then the lessor must collect sales tax on the lease payments.

² § 39-26-104(1), C.R.S., 1 Code Colo. Reg. 201-4.

³ Illinois Department of Revenue General Information Letter ST00-0156 T-GIL; 39-1-102(11), C.R.S. (Colorado property tax classifies telecommunication assets on leased property as tangible personal property).

⁴ § 39-1-102(11), C.R.S. (Colorado property tax classifies telecommunication assets on leased property as tangible personal property)

⁵ *BP American Production Company v. Department of Revenue*, 369 P3d 281(Colo. 2016).

Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue