



COLORADO

Department of Revenue

Taxation Division

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

DOR_TaxPolicy@state.co.us

PLR 18-007

August 27, 2018

XXXXXXXXXX
Attn: XXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Private letter ruling

Dear Ms. XXXXXXXX,

You submitted a request for a private letter ruling on behalf of your client, XXXXXX (“Company”) and XXXXX (“Credit Union”) to the Colorado Department of Revenue (“Department”) pursuant to Department Rule 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 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Is buyer’s payment to a Dealership to participate in the Program subject to sales or use tax?
2. Is the payment of the Benefit by Company pursuant to the Program to Dealership subject to sales or use tax?
3. Is the value of the Benefit paid by Company to Dealership included in the calculation of sales tax collected from the buyer for the purchase of the replacement motor vehicle?

Conclusions

1. No.
2. No.
3. Yes.

Background

Company offers a program (“Program”) that provides motor vehicle owners compensation (“Benefit”) for the loss of a vehicle’s value due to depreciation when the vehicle is destroyed or stolen. Motor vehicle buyers can participate in the Program by paying a fee when they purchase a vehicle from a participating motor vehicle dealership (“Dealership”).¹ Buyers are not required to purchase the Program. The Program fee is separately stated from the price of the motor vehicle. The Program fee is collected by the Dealership either directly from the buyer or from the proceeds of a car loan obtained by the buyer from a finance company, such as from Credit Union.

In the event that a vehicle is a total loss or is stolen, the buyer receives the Benefit in the form of a credit toward the purchase of a replacement vehicle from the Dealership. The buyer must purchase the replacement vehicle from the same Dealership from which buyer purchased the original vehicle.² Company pays the Benefit directly to the Dealership. Buyers are not entitled to a cash payment as a substitute for the credit. The Benefit value is equal to the cash selling price for the original motor vehicle minus any insurance proceeds paid by buyer’s own insurance carrier.³ Buyer pays the Dealership the purchase price for the replacement vehicle minus the Benefit value.

A buyer who purchased the Program⁴ has a 30-day free look period in which a full refund may be received, and the buyer may cancel the Program at any time before the expiration date of the contract. After the 30-day free look period elapses, the Program fee is refundable on a pro-rata basis and will be assessed a \$50 cancellation fee. If buyer’s vehicle has not suffered a total loss or has not been stolen before the expiration of the Program period, the buyer has no right to the Benefit or to a refund of the Program fee.

Company enters into an agreement with a Dealership to administer the Program and to maintain a Universal Contractual Liability Insurance Policy. The insurance policy insures the Dealership for the Benefit to which the buyer is entitled.

¹ Dealership may be a single dealership or a group of participating dealerships. In this ruling, Dealership refers collectively to both.

² In the event the customer is more than 100 miles from where they purchased the original vehicle, or the Dealership is out-of-business, the customer may contact Company for assistance with locating another Dealership from whom buyer can purchase a replacement vehicle and receive the Benefit.

³ The cash selling price is the price prior to the addition of tax, title, additional front end products, or documentation fees. The cash selling price does not include any manufacturer or dealer rebates or discounts.

⁴ The Program is effective for a set period of time.

Discussion

1. Tax does not apply to payments by buyer for the Program.

Sales tax applies to the sale of tangible personal property.⁵ A buyer does not acquire tangible personal property when the buyer pays the Program fee.⁶ Therefore, the payment of the Program fee is not a taxable sale.

However, the price for a non-taxable product or service sold in connection with the sale of a taxable product is included in the calculation of tax for the taxable product if the price for the non-taxable product or service is not separately stated or the sale of the non-taxable product or service is inseparable from the sale of taxable product.⁷ Based on Company's and Credit Union's representation that customers have the option to purchase the Program as part of their purchase of a motor vehicle but are not required to and, if the Program is purchased, the Program fee is separately stated from the purchase price for the vehicle, the Program fee is not included in the calculation of tax for the motor vehicle.

2. Tax does not apply to the payment of the Benefit by Company to the Dealership.

Company's payment of the Benefit to the Dealership is not an event that gives rise to a sales or use tax obligation. The buyer does not acquire the motor vehicle in exchange for the payment from Company to the Dealership. The buyer's tax obligation arises only when the buyer obtains ownership or possession of the vehicle.⁸

3. The Benefit value is included in the purchase price on which tax is calculated.

Tax is calculated on the purchase price paid by a buyer.⁹ Payments made to the retailer by a third party on behalf of a buyer are included in the purchase price on which tax is calculated.¹⁰ Therefore, the value of the Benefit paid by Company to Dealer is included in the calculation of the tax due on the purchase of the replacement vehicle.¹¹

⁵ § 39-26-104(1), C.R.S.

⁶ Department Regulation 39-26-102.15. The payment is similar to an insurance premium. A buyer of insurance is not purchasing the replacement of the item insured but, rather, an intangible right to receive monetary compensation in the future.

⁷ *AD Stores v. Department of Revenue*, 19 P.3rd 680 (Colo. 2001)

⁸ Department Regulation 39-26-102.15

⁹ § 39-26-104(1), C.R.S.

¹⁰ Department Regulation 39-26-102.7(a)(1) and (3)

¹¹ For example, if the purchase price for the vehicle is \$20,000 and the value of the Benefit is \$5,000, tax is computed on \$20,000, even though the cash paid by the buyer is only \$15,000.

Miscellaneous

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

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

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. 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

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.

The Dealership will report the purchase price (\$20,000), without deducting the Benefit value, as gross sales on Department form DR 024.