



**COLORADO**

**Department of Revenue**

Taxation Division

Office of Tax Policy  
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Denver, CO 80217-0087

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PLR 24-005

June 20, 2024

XXXXXXXXXXXXXX  
XXXXXXXXXXXXXX  
XXXXXXXXXXXXXX

Via Electronic Mail: XXXXXXXXXXXXXXXX

Re: Sales Tax Exemption on Building and Nonbuilding Materials

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXXXXXX to the Colorado Department of Revenue (“Department”) pursuant to 1 CCR 201-1, 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 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayers to whom the ruling is made.

**Issues**

1. Whether Company’s verification of a retailer-contractor’s valid Colorado sales tax license is sufficient to prove that the Company is exempt from collecting sales tax on the retailer-contractor’s purchase of building and construction materials that are delivered to the retailer-contractor’s warehouse or business location.
2. Whether Company’s verification of a retailer-contractor’s valid Colorado sales tax license is sufficient to prove that the Company is exempt from collecting sales tax on the retailer-contractor’s purchase of building and construction materials that are delivered to a job site.
3. Whether Company’s verification of a retailer-contractor’s valid Colorado sales tax license paired with Company’s evaluation of the reasonableness of a mechanical retailer-contractor’s purchase of non-building materials is sufficient to prove that Company is exempt from collecting sales tax on the purchase of non-building materials by mechanical retailer-contractors when such purchases are likely to be resold, but Company should collect sales tax on the purchase of tools and other contractor supplies when such purchases are likely used by the mechanical retailer-contractor.

**Conclusions**

1. Yes. When the Company verifies that a retailer-contractor’s Colorado sales tax license is valid, such verification is sufficient to exempt the retailer-contractor’s purchase of building and construction materials that are delivered to the retailer-contractor’s warehouse or business location.
2. Yes. When the Company verifies that a retailer-contractor’s Colorado sales tax license is valid, such verification is sufficient to exempt the retailer-contractor’s purchase of building and construction materials that are delivered to a job site.

3. Yes. When the Company verifies the exemption documentation from the customer and evaluates the reasonableness of a mechanical retailer-contractor's purchase of non-building materials, such verification and evaluation is sufficient to exempt the mechanical retailer-contractor's purchases that are likely to be resold. Company must collect sales tax on the purchase of tools and other contractor supplies when such purchases are likely to be used by the mechanical retailer-contractor.

### **Background<sup>1</sup>**

Company provides expertise, solutions, and products—from infrastructure, plumbing, and appliances to HVAC, fire, fabrication, and more—to residential and nonresidential contractors. The products are delivered through a common network of distribution centers, branches, specialist sales associates, counter service, and showroom consultants. Company operates XXXXXXXXXX in Colorado to serve customers that typically align to nine different customer groups. Each customer group includes competitors that range from large national companies to small, privately owned distributors, including but not limited to plumbing, HVAC, mechanical, and electrical contractors, as well as general construction contractors, property developers, and homebuilders. Company delivers purchases to customers at the Company branches, by Company delivery, or by third-party carrier as well as drop shipments direct to customers from Company's independent third-party national suppliers for non-stock items.

A high percentage of Company's customers are contractors. These customers are typically treated as consumers from which Company collects state and state-administered local sales tax absent presentation of specific exemption documentation or the presentation of local building permits showing payment of local taxes, or both. Recently, an increasing number of Company's customers are becoming licensed with the Department as retailer-contractors and are presenting a sales tax license to Company for all purchases of building and construction materials, as well as for non-building materials.

A significant number of Company's sales are purchases by mechanical retailer-contractors. These contractors are typically involved in installing various systems that use mechanical elements in residential and commercial buildings. However, the mechanical retailer-contractors also frequently resell to others or install many non-building materials, including the following:

- Appliances;
- Residential or commercial water heaters;
- Furnaces;
- Heat pumps;
- Air handlers;
- Air condenser units;
- Mirrors and other accessories, such as grab bars or safety bars;
- Ready-made cabinets and vanities;
- Lighting fixtures;
- Refrigerated cases for grocery stores and other retail locations; and
- Tools or other contractor supplies.

When a customer claims a purchase is exempt, Company reviews any presented sales tax exemption documentation and verifies the Colorado license or certificate using the Department's online verification system or confirms that such verification has been properly documented on a prior recurring business transaction. For example, Company generally records a customer's tax exemption number in its point-of-sale system whenever a new customer account is created and uploads any exemption documentation presented by the customer to Company's automated exemption certificate management system for ready

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<sup>1</sup> Paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5 requires the request for a private letter ruling to include a statement of facts. This section generally recites the statement of facts provided in the initial request or in any supplement or amendment thereto, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be redacted or omitted to ensure confidentiality as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

future access. As part of this acceptance and verification process, Company also evaluates whether the non-building materials are reasonably resold by the mechanical retailer-contractor.

### Discussion

Colorado imposes a sales tax on the retail sale of tangible personal property, unless a specific sales tax exemption applies.<sup>2</sup> The term “tangible personal property” means “corporeal personal property,” and generally embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances that are dealt in and capable of being possessed and exchanged.<sup>3</sup> For any sale of tangible personal property for which an exemption from sales tax is claimed, the burden is on the retailer to prove that they are exempt from collecting the tax on the purchase.<sup>4</sup> To claim an exemption from sales tax, a purchaser must present exemption documentation to a seller, and the seller must exercise due diligence in verifying such documentation and claim.<sup>5</sup> It is the seller’s responsibility to determine the purchaser’s eligibility for the claimed exemption.<sup>6</sup> If the seller has reason to doubt the purchaser’s eligibility for the claimed exemption, the seller must “obtain and retain sufficient information and documentation from the purchaser to resolve the doubt or must collect the applicable tax.”<sup>7</sup>

Company sells building materials to customers. These building materials may be delivered, by Company or by third-party carriers, to the customer’s business location, warehouse, or job site. When a retailer-contractor presents a sales tax license to Company, Company should verify such documentation and determine whether the goods sold are reasonably for resale in the course of the purchaser’s ordinary business.<sup>8</sup> When Company verifies the exemption documentation, Company may rely on the exemption documentation and not charge sales tax on the building materials sold to a retailer-contractor.<sup>9</sup> The location of the delivery does not impact whether a valid sale tax license is sufficient to document an exempt sale of building materials to a retailer-contractor.

Company regularly sells non-building materials to mechanical retailer-contractors. As noted above, it is the responsibility of the seller to evaluate the purchase and determine that the goods being sold “are reasonably for resale in the course of purchaser’s ordinary business.”<sup>10</sup> Company, as seller, has the burden of demonstrating that the purchaser was eligible for the exemption.<sup>11</sup> If there is any question about the purchase being reasonably for resale in the ordinary course of business, Company must collect the tax.<sup>12</sup> While some non-building materials may be reasonably for resale in the course of a mechanical retailer-contractor’s business, other non-building materials, such as tools and other contractor supplies, are likely purchased for use by the mechanical retailer-contractor when performing projects. Company must collect sales tax on the latter. A purchaser who believes sales tax was wrongly collected on their purchase may file a claim for refund from the Department.<sup>13</sup>

### Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts, that all representations are true and complete, and that Company has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Company’s facts,

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<sup>2</sup> Section 39-26-104(1)(a), C.R.S.

<sup>3</sup> Section 39-26-102(15)(a)(I), C.R.S.

<sup>4</sup> Section 39-26-105(3)(a), C.R.S.

<sup>5</sup> Paragraph (1) of 1 CCR 201-4, Rule 39-26-105-3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at (2)(a) and (2)(c).

<sup>9</sup> *Id.* at (1).

<sup>10</sup> Paragraph (2)(c)(i)(A) of 1 CCR 201-4, Rule 39-26-105-3

<sup>11</sup> Section 39-26-105(3)(a), C.R.S.

<sup>12</sup> Section 39-26-703(1), C.R.S.; Paragraph (2)(c)(ii) of 1 CCR 201-4, Rule 39-26-105-3.

<sup>13</sup> Paragraph (2)(c)(ii) of 1 CCR 201-4, Rule 39-26-105-3.

representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department, and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

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](http://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

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