COLORADO
Department of Revenue
Taxation Division

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GIL-2008-27

October 16, 2008

XXXXXXXXXXXXX
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Re: Ruling Request – commercial signage and installation

Dear XXXXXXXXX,

The department has reviewed your letter dated February 21, 2008. First, let me apologize for the delay in responding to your request. The department recently acquired the staff needed to respond to these types of requests. The department also recently enacted a regulation governing requests for tax advice. We issue both private letter rulings and general information letters. See, §24-35-103.5, C.R.S. and Department regulation 24-35-103.5. Private letter rulings are issued in response to tax questions addressed to specific factual settings and are binding on the department. General information letters are issued in response to general tax questions and are not binding on the department.

I am initially treating your request as a request for a general information letter. As noted above, general information letters are general discussions of tax law and are not a determination with respect to any particular factual setting. For this reason, this letter is not a determination that the company's products fall within any exemption. If you would like a private letter ruling, please take a moment to review the regulation and resubmit your request with the necessary information.

Issues

You ask a series of questions regarding the taxability of signs manufactured and installed by your company. Specifically, you ask:

1. What is taxable to your customers for various types of signs, described below?

2. How does tax apply to the following charges that may appear on a customer's invoice?
    - Installation
    - Removal of old signs
    - Crating
    - Freight
    - City permits
    - Material and labor to connect the sign to electricity
    - Patch and paint the building where the old signs were removed
    - Preliminary survey to determine what signs are needed
3. What is taxable when you hire an independent contractor to do repairs on signs?
4. What local taxes should you collect?

Background

Your company is located in [another state] and it has a sales office in Colorado. The company manufactures a variety of signs, including pole signs (but not billboards), building signs and letters, building awnings and interior signs such as menu boards and "Open" signs. Generally, you describe these signs as "permanent" electrical signs bolted to the walls or concrete base. The company also furnishes and installs door vinyl showing the hours of business operation. If signs require installation, the company contracts with a subcontractor who installs the signs. The company issues the customer an invoice, which includes the cost of the sign, the subcontractor's charge, and a mark up to the subcontractor's charge. The company ships the signs by common carrier, the charge for which is marked up and separately stated on the customer's invoice. You state that ownership of the signs passes to the customer after installation and payment in full.

Discussion

1. *Taxability of signs*.

Colorado levies sales tax on the sale of tangible personal property. See, 39-26-104(1(a), C.R.S. However, tangible personal property does not include property that loses its identity when it becomes an integral and inseparable part of the realty and is removable only with substantial damage to the premises. Department Regulation (39)26-102.15, C.R.S. The fact that property is bolted to the real property does not necessarily mean that the property is an integral and inseparable part of the realty. Generally speaking, most commercial signage does not fall within this exemption because most signage does not become an integral and inseparable part of the real property. In any event, it is not possible with the facts you provide, nor appropriate in the context of a general information letter, to determine whether the company's signs fall within this exemption.

2. *Related service charges.*

You have listed a variety of charges that may apply. In general, sales tax is imposed on,

"the full purchase price of article sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, …. Except as otherwise provided …, the sales price is the gross

value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer."

§39-26-102(12), C.R.S. However, services that are separable from the sale of tangible personal property are not taxable. *A.D. Stores v. Department of Revenue*, 19 P3d 680 (Colo.2001). Inseparable services are generally those that the customer has no realistic option but to acquire from the retailer.

a. Charges removal of old sign and installation of new sign.

Colorado does not impose sales or use tax on services incurred after manufacture, unless the services are inseparable from the sale of the property. *A.D Stores v Department of Revenue.*

b. Crating.

A manufacturer's purchase of crating used to ship tangible personal property to the consumer is an exempt wholesale purchase, regardless of whether the manufacturer subsequently itemizes the crating in the invoice to the customer. See, Department Special Regulation (Sales) 9. However, the manufacturer's subsequent sale of the crating to the consumer is a sale of tangible personal property and, as such, is subject to sales tax. §39-26-104(1), C.R.S.

c. Transportation charges.

Transportation charges related to the purchase of tangible personal property are generally not taxable, unless they are either inseparable from the sale or are freight-in charges. If a purchaser has no realistic option but to use the transportation services of the seller, then the transportation charge is not separable and is taxable. See, Department Special Regulation 18 "Transportation Charges." Freight-in charges are "[t]ransportation charges incurred in connection with transporting tangible personal property from the place of production or the manufacturer to the seller or to the seller's agent or representative, or to anyone else acting in the seller's behalf, either directly or through a chain of wholesalers or jobbers or other middlemen, are deemed "freight -in" charges and are not a transportation charge exempt from tax."

d. City permits.

In general, the purchase price upon which sales tax is calculated is the gross value of all property and services included in the price charged to the purchaser. This includes governmental fees and taxes (except federal taxes) owed by the seller. For example, a lessor is typically obligated to pay business personal property tax on property it rents to a lessee and the lessor must include this tax in the sales tax calculation.

City permits present a slightly different issue. It is my general understanding that a city permit is ultimately an obligation of the building owner, not the contractor. This is true even though the contractor may, for the convenience of the building owner, obtain the permit as an agent of the owner. If the city permit is the responsibility of the owner, the tax should be excluded from the calculation of sales tax. Conversely, if the permit is not the obligation of

the owner but, rather, the obligation of the contractor, then the permit fee is included in the calculation of sales tax.

e. Material and labor to connect the sign to electricity.

See, response to 1(a), above. A contractor who charges construction services on a time and material basis should charge sales tax on the value of the property, but not the labor. A contractor who charges on a lump sum basis is deemed the consumer of the property and, therefore, should pay tax on its acquisition of the property and not charge the customer sales tax. See, generally, FYI Sales 18 and Special Regulation 10.

3. Repairs performed by independent electrical contractors.

See response to 1(a), above. The taxability of charges to a customer for the electrical repair work and repair parts will depend on whether the company enters into a time and material contract or a lump sum contract with the customer. See FYI Sales 18 and Special Regulation 10. Whether the subcontractor owes tax will depend both on the type of contract it has with the general contractor and on the type of contract the general contractor has with the customer. The subcontractor must pay use tax on the repair parts if it enters a lump sum contract with the general contractor. This is because the subcontractor is deemed to be providing a service to the general contractor and, therefore, the subcontractor is the consumer of the repair parts. Under this circumstance, neither the general contractor nor the customer will pay use or sales tax on the repair parts.

If the contract between the subcontractor and the general contractor is a time and material contract, then the subcontractor's sale of the repair parts to the general contractor is considered an exempt wholesale sale if the general contractor has also entered into a time and material contract with the customer. The general contractor must charge the customer for sales tax under these circumstances.

If, on the other hand, the general contractor has entered into a time and material contract with the subcontractor and a lump sum contract with the customer, then the general contractor must pay sales tax to the subcontractor. This is because the general contractor does not, under a lump sum contract, resell the repair parts to the customer. Because there is no resale to the customer, the sale from the subcontractor to the general contractor is not an exempt sale for resale. In turn, the general contractor does not charge tax to the customer for the repair parts because, again, under a lump sum contract, the general contractor is considered a service provider and it, not the customer, is the consumer of the repair parts.

You can find more information about how and when taxes are paid and collected by contractors in the Department's FYI Sales 18 and Special Regulation 10, both of which are available on our web site.

4. Applicable taxes

The state levies a state sales and use tax. Cities, counties and special districts also levy sales and use tax. Statutory cities can levy a sales tax, but can levy only a use tax on building materials and supplies. The department administers the state taxes and the sales tax for statutory cities and special districts. Home-rule cities generally administer their own sales and use taxes. Department Publication 1002 (DRP 1002) has a complete listing of cities, counties and special districts, together with their tax rates and exemptions.

Department Publication FYI Sales 62 provides a general outline for when and how to collect and report local sales and uses taxes.

The department has numerous resources to assist retailers with sales and use tax questions. These resources are easily accessed on the department's web site at: www.revenue.state.co.us. Click on "Taxation" > "Publications / Resources" and select FYI's, Regulations or Tax Information Index. DRP 1002 is found under "Forms." You can also easily access an on-line Sales Tax Information System to find sales and use taxes for all cities, counties, and special districts in Colorado. I also encourage you to take advantage of an electronic database to determine what local jurisdictions apply to a given address. This system is located on our web site under "On-line Services" > "Sales Tax Information" > "Local Taxes by Address."

Pursuant to state law, the Department will make public a redacted version of this letter. Your letter requesting this informational letter is not made public. See, §24-35-103.5(13), C.R.S. The regulation governing private letter rulings and informational letters is available on our web site at:

http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html.

I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments or concerns about the redacted letter.

Sincerely,

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Office of Tax Policy
Colorado Department of Revenue