COLORADO
Department of Revenue
Taxation Division

Office of Tax Policy Analysis
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PLR 21-007

November 22, 2021

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Via Electronic Mail: XXXXXXXXXX

Re: Sales tax on shredded tires and railroad ties used as alternative fuel sources

Dear XXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXX (the "Company"), regarding sales tax on shredded tires and railroad ties used as alternative fuel sources, 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 taxpayer to whom the ruling is made.

## Issue

Are shredded tires and railroad ties that are utilized and burned to subsidize the requirement for coal in the cement manufacturing process exempt from sales tax pursuant to section 39-26-102(21), C.R.S.?

## Conclusion

No, shredded tires and railroad ties that are utilized and burned to subsidize the requirement for coal in the cement manufacturing process are not exempt from sales tax pursuant to section 39-26-102(21), C.R.S.

## Background[1]

Company has provided the following statement of facts:

> Company is in the business of manufacturing cement from raw materials. In the process of cement manufacturing, it is essential to have extremely high temperature fires to bake

[1] 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 request, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be 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.

raw materials within the kilns in the manufacturing process (to create clinker). The original design of the cement manufacturing plant utilized only coal to fuel the required high temperature heat needed in the manufacturing process.

The plant was later modified so that shredded tires could be utilized as an alternative fuel source in the manufacturing process. The use of the shredded tires to fuel the heating source reduces the amount of coal needed in the manufacturing process. Later, the plant was again modified so that railroad ties could also serve as an alternative fuel source to try and further reduce the need for coal.

The shredded tires and railroad ties serve the exact purpose as the coal and reduces the need for additional fossil fuels as well as utilizes waste product that would need to be discarded in some manner. The shredded tires and railroad ties are acquired from 3rd parties. The 3rd parties shred whole tires into a usable shredded product that can be utilized as a fuel source as well as to prepare the railroad ties into a usable product that can be burned at the plant.

## Discussion

Colorado imposes sales tax on retail sales of tangible personal property made within the state.[2] Section 39-26-102(21), C.R.S., exempts from sales tax "[s]ales and purchases of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel, for use in processing, manufacturing," and various other specified activities.

Shredded tires and railroad ties are both tangible personal property that are subject to Colorado sales tax. Shredded tires and railroad ties are not named in the list of items exempted pursuant to section 39-26-102(21), C.R.S., nor do they fall within the meaning of any of the items listed (e.g. electricity, coal, etc.). Therefore, shredded tires and railroad ties do not qualify for exemption under section 39-26-102(21), C.R.S., regardless of how they are used.[3]

## 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, 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

[2] §§ 39-26-102(9) and -104(1)(a), C.R.S.
[3] "If the statute is clear and unambiguous on its face, we construe the statute according to its plain language and apply the statute as written." *Pioneer Nat. Res. USA v. Dept. of Rev.*, 2014 COA 101 ¶ 9, 356 P.3d 924, 925-26 (quotation marks omitted).

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 Analysis
Colorado Department of Revenue

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