



**COLORADO**  
Department of Revenue  
Taxation Division

Office of Tax Policy  
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Denver, CO 80217-0087

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PLR 22-001

April 8, 2022

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Re: Bulk Water Sales

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX (the “Company”), regarding the sales taxation of bulk water sales, 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**

Whether Company’s sales of water are tangible personal property subject to Colorado sales tax.

**Conclusion**

Company’s sales of water are not sales of tangible personal property and are, therefore, not subject to Colorado sales tax.

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

Company is engaged in the business of selling bulk water to customers’ oil and gas well locations for hydraulic fracturing. Bulk water is non-potable river water. Company sets up water transfer pumps to withdraw water for delivery from the ditch and reservoir systems and push-through temporary surface lay-flat lines to customers’ well locations. Company sources the water, secures the private right-of-way for its surface lay-flat hoses and access to the ditch infrastructure, and operates the transfer. Water transfer pumps and lay-flat hoses are staffed and monitored 24 hours per day while transferring the water. Daily meter readings are taken, and customers are invoiced at the end of the month. All of this is done in coordination with the XXXXXXXXXXXX or in one instance the XXXXXXXXXXXX as the source of water, the ditch

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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 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.

companies, and the river commissioner in order to transit the water while accepting Company's share of shrink and loss within each of those systems.

### **Discussion**

Company's sales of water are not sales of tangible personal property and are, therefore, not subject to Colorado sales tax. Colorado generally imposes a sales tax on the retail sale of tangible personal property.<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> However, "tangible personal property" does not include water in pipes, conduits, ditches, or reservoirs.<sup>4</sup> Company is selling water from the ditch and reservoir system to customers via conduits (surface lay flat hoses). Therefore, company is not making retail sales of tangible personal property upon which the state sales tax is imposed.

### **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 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.**

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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> 1 CCR 201-4, Rule 39-26-102(15), paragraph (2)(c).