

Request for Amendment to Commerce City Municipal Tax Code to Exempt the Amount Paid for Federal Excise Tax on a New Truck or Trailer from the City Sales Tax

Requested by the Colorado Motor Carriers Association (CMCA) and the Colorado Auto Dealers Association (CADA)

Issue

In the past couple of years confusion has arisen related to whether the 12% Federal Excise Tax (FET) assessed on any new heavy truck or trailer that is sold, is subject to a community's sales tax. Based on the view that FET is a direct tax and most city sales tax codes exempt those fees from taxation, city sales tax has generally not been collected. (The concept of applying a tax on the amount of another tax is one that most governments view as inappropriate).

Being that the FET is reflected as a separate line item on the invoice for a new truck or trailer and is paid by the customer at the time of purchase, the FET has been viewed by most experts as a direct tax and not subject to local sales tax.

In the prior year an issue arose in Denver where a city auditor made a finding that the city sales tax should be assessed on the FET because she viewed it as an indirect tax and subject to city sales tax. CMCA was not aware of any of our member companies ever being assessed for sales tax on the FET and our organization contacted the Denver City Finance staff to discuss the matter. The City staff and their legal team reviewed the matter and believed that the language in the present code was not clear on this matter. At the same time, they agreed that the FET portion of the bill should be excluded from the city sales tax. In turn they suggested the municipal tax code be amended with specific language to be incorporated in the code to make it very clear that FET is excluded. CMCA worked with the city finance staff in developing the language related to exempting FET from their municipal tax code and an amendment to the code was brought before Denver City Council in October 2019 and passed unanimously.

In reviewing this situation, we realized that Commerce City's Municipal Tax Code had almost the exact language as Denver prior to being amended by the Denver City Council. Based on the view that similar ambiguity over FET could arise in the future in Commerce City, it was suggested that a similar amendment be considered to the city's Municipal Tax Code to clarify that FET would not subject to the city sales tax. While we are unaware of the city assessing its sales tax on FET, it was suggested that an amendment to the code be made to clarify this matter and eliminate any confusion in the future.

Background and Overview of the Federal Excise Tax (FET)

The Highway Revenue Act of 1982, modified a prior tax on trucks and trailers, and changed it to a 12% tax on the first retail sale of certain highway-type tractors and chassis and bodies for highway-type trailers and trucks. Section 4051 imposes a tax on the first retail sale of the following articles:

- (1) Automobile truck chassis and bodies.
- (2) Truck trailer and semitrailer chassis and bodies.
- (3) Tractors of the kind chiefly used for highway transportation together with a trailer.

The basis for determining the FET on a tractor or trailer is the price including the total consideration paid for the article whether that consideration is paid in money, services, or other forms. This cost excludes any direct taxes. While the truck or trailer dealer must collect and remit payment of the FET to the federal

government, the actual tax is paid by the customer at the time of the vehicle sale and is based upon the purchase price negotiated with the customer.

One misconception on FET is that the truck or trailer dealership is paying the FET upfront and then incorporating it into the price of the vehicle to the buyer. The reality is that the dealership collects the FET from the buyer on behalf of the federal government based on the actual purchase price of the vehicle at the time the sales transaction is completed and passes the tax to the IRS.

Current Practices

In discussing this matter with truck dealerships within the state, they have indicated that they have never collected either state or local sales tax on the portion of the bill relating to FET. Many of our truck dealerships have branches in other states and they further indicated they have not collected city sales tax on the FET portion in any of those other states. The reasoning has been that FET is viewed as being exempt because it is deemed a direct federal tax. Most communities and states throughout the country exclude direct taxes from their municipal tax codes.

Commerce City Municipal Tax Code Related to Sales Tax and the Exemption for Direct Taxes

Below is the key section within the Commerce City Municipal Code relating to sales tax and the language that exists relating to the exclusion of direct taxes as part of the base for taxation:

“the price or purchase price means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government”

Reasons to Exempt FET from City Sales Tax

- A. The primary reason for exempting FET from the city sales tax is that it is a tax assessed directly to the buyer of a new tractor or trailer at the time of purchase. It is not incorporated into the price of the vehicle by the truck dealer but rather applied at the time of purchase to the buyer based on the actual sales price of the unit and merely collected by the dealership who is the only authorized party to transmit it to the IRS.
- B. Being that the customer pays it at the time of purchase, it has always been viewed as a direct federal tax which is exempt from state and local sales tax. Applying Commerce City sales tax on the FET would mean that the city would be “taxing a tax”.
- C. As is the case with other forms of direct taxes, the FET is specifically called out as a separate line item on the invoice for the product, in this case a new tractor or trailer. It is clearly denoted as FET.
- D. None of our dealerships have ever collected city or state sales tax on the Federal Excise Tax portion of the sales price of a truck or trailer. Many of these dealers have operations in other states and have never been required to assess it in those other states.
- E. The FET is only paid AFTER the vehicle is sold to a buyer. This is because the FET amount is not calculated until a final negotiated purchase price between the dealer and the buyer has been established. This clearly points to the fact that the truck buyer represents the true “first retail” buyer and the dealership merely serves as a middleman in passing the FET to the federal govt.
- F. State sales tax is collected and remitted in a similar manner as FET, yet it is considered a direct tax, and the amount is not subject to the city sales tax. Like the FET, our dealerships and businesses collect the state sales tax AFTER the sale of the product and remit it to the state.

Requested Action

CMCA and CADA are requesting that Commerce City amend its municipal tax code in a similar manner as the City of Denver and clearly exempt FET from being subject to city sales tax and eliminate any confusion on this matter.