



**COLORADO**  
Department of Revenue  
Taxation Division

Office of Tax Policy  
P.O. Box 17087  
Denver, CO 80217-0087

DOR\_TaxPolicy@state.co.us

GIL-13-008

April 18, 2013

XXXXXXXXXXXXXXXX  
ATTN: XXXXXXXXX  
XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXX

Re: Fees Associated with Company-Owned Vending Machines

Dear XXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on service fees in connection to a new program Company is developing.

The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

### **Issue**

Are the enumerated fees subject to Colorado sales and use tax?

### **Background**

Company sells fasteners (screws, nuts, etc.), along with industrial, construction and safety supplies. Company is developing a new program ("Program") intended to improve convenience for Company's end-user customers. Program places Company-owned vending machines at a customer's worksite. This allows customers to purchase Company's products at their worksites, which would otherwise have been picked-up at or shipped by Company's local branches.

Customers, who are the end-users of all products purchased through the vending machines, enter into Program by signing a contract to participate in Program for three years or more. Potential customers will include: manufacturing sites, rail yards, maintenance areas, and refineries. Customers will be billed and taxed according to the products purchased through the vending machines on a weekly basis.

Company represents that the service fees in question are not related to the sale of products from the vending machines, but are incurred by customers in exchange for access to the worksite vending option. These fees do not represent any transfer of ownership or transfer of tangible personal property. Program service fees are billed separately on an initial invoice, followed by an annual invoice. The service fees are fixed, as negotiated in the contract, and will be due regardless of the volume of sales generated through Program.

The service fees in question are:

1. Implementation Fee: A one-time fee assessed to customers for Program's vending machine to be delivered and connected to the customer's worksite.
2. Web-Hosting Fee: An annual fee assessed to customers in exchange for a service via the Internet that allows customers to review usage reports, and allows Company's employees to determine stocking needs for customers.
3. Management Fee: An annual fee assessed to customers for the labor associated with Company's employees traveling to a customer's worksite and stocking the vending machine.
4. Process Fee (if applicable): An annual fee assessed to customers due to increased overhead costs required to process payments in an alternate option of ACH Credit, Net 15 Invoicing, or Credit Cards, as opposed to ACH Debit option of payment, which incurs no Process Fee.

## Discussion

The Department does not have a regulation or publication that specifically addresses your inquiry. The following is a general discussion of the tax issues surrounding your request. If you would like a specific ruling on the issues you raise, you can request a private letter ruling by submitting a request and fee in compliance with Department Regulation 24-35-103.5.

Colorado levies sales tax on the sale, use or rental of tangible personal property, but not on the sale of services.<sup>1</sup> There are, however, important exceptions to the non-taxability of services. For example, in *AD Stores v Department of Revenue, 19 P.3d 680 (Colo. 2001)*, the Colorado Supreme Court held that charges for dress alteration are "separable" from the sale of a finished dress and, therefore, are excluded in the sales tax calculation. Conversely, services that are inseparable from the sale of taxable tangible personal property are included in the sales tax calculation, even if the service charge is separately stated on the customer's invoice. One of the principal factors the Department considers when evaluating whether a service is "separable" is whether the buyer has the option to obtain the goods without also purchasing the service.

Nearly all sales of taxable tangible personal property have labor and overhead cost components. For example, a retailer typically employs sales staff to assist customers with their purchases. Retailers may also provide customer parking, an in-store Internet kiosk from which to place orders, shelves on which to place products and other services and amenities that customers may find useful. Retailers recover these labor and overhead costs in the price of

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<sup>1</sup> §39-26-104(1)(a), C.R.S. You can view statutes on the Department's web site at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > tax library > statutes.

the goods sold. Moreover, a brick and mortar store cannot disaggregate costs such as shelving, transportation, building site, parking lot, etc. from the cost of their products. These costs, which are included in the sales price of products, are generally an inseparable part of the sales price, and the retailer cannot exclude them from the sales tax calculation by separately charging for them on an invoice.

#### *Implementation and Web-Hosting Fees*

The implementation and web-hosting fees appear to be similar to charges for costs associated with bringing Company's products to market. Program's vending machines will be delivered and connected to a customer's worksite and the web-hosting fee will monitor sales so Company's employees are aware when to restock the vending machine. Company is essentially creating a smaller version of their branch store at the customer's worksite. These costs are commonly an inseparable part of the sales price, and Company most likely cannot exclude them from the sales tax calculation by separately charging for them.

#### *Management Fee*

The management fee is assessed to compensate Company for the labor of an employee traveling to the customer's site and stocking the vending machine. In short, this fee is similar to a transportation charge.

Transportation charges incurred in connection with transporting tangible personal property to the seller or seller's agent, representative, or 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.<sup>2</sup> The Department would likely view the management fee as a "freight-in" charge because Company's products are being transferred to the vending machine, which appears to be the "seller."

#### *Process Fee*

Sales tax is calculated using the "purchase price paid or charged."<sup>3</sup> "Purchase price is "the amount of money received or due in cash and credits [and] ... [a]ny consideration valued in money..."<sup>4</sup> Fees, which are otherwise non-taxable (e.g., charges for services) but are also related to the sale of taxable goods, are included in the sales tax calculation if the fees are inseparable from the sale of the product.<sup>5</sup>

### **Miscellaneous**

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes

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<sup>2</sup> Department Special Regulation, SR-18, "Transportation Charges." You can view this Regulation on the Department's web site at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > Rules and Regulations > Final Tax Regulations > Sales and Use Tax > SR-18.

<sup>3</sup> §39-26-104(1)(a), C.R.S.

<sup>4</sup> Department Regulation 39-26-102.7(a)(1) and (3).

<sup>5</sup> *AD Stores v Department of Revenue*, 19 P.3d 680 (Colo. 2001).

about the applicability of those taxes. Visit our web site at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Office of Tax Policy  
Colorado Department of Revenue