



**COLORADO**  
**Department of Revenue**

Taxation Division  
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Denver, CO 80203

Mailing Address:  
P.O. Box 17087  
Denver, CO 80217-0087

PLR-16-003

March 10, 2016

XXXXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Re: Billing Services

Dear XXXXXXXXXXXXX,

You submitted on behalf of your client ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Department 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 Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

**Issue**

1. Are Company's paper or electronic billing services subject to Colorado state sales tax?
2. If the sale of a personal service includes the incidental transfer of tangible personal property—i.e. a paper bill—does this inclusion of personal property render the transaction fully taxable or is this transfer of personal property incidental to the provision of the billing services?

**Conclusion**

1. The paper or electronic billing services are not subject to sales tax because it is a nontaxable service.
2. The paper billing is an incidental transfer of personal property related to the provision of a nontaxable service.

**Background**

Company is headquartered outside of Colorado, but has a physical presence in Colorado. Company provides outsourced billing services to its customers. Company creates both paper bills that are mailed and electronic bills that are sent electronically.

Company receives billing data and other information from its clients through an electronic data exchange. Company processes this raw data using its own in-house, custom-developed software.

Clients specify the preferred billing delivery method for each client's customers. Clients' customers can choose either paper bill invoices or various forms of electronic delivery. If a client's customer selects paper invoices, Company prints, folds, and mails bills to that

client's customer. These customers may be located in several different states. Company has three forms of electronic delivery: (1) email billing; (2) online billing; and (3) fax billing. If an email billing is selected, Company sends an electronic copy of the bill in pdf format via email. For online billing, Company notifies the client's customer via email that the bill is available for viewing via Company's online application.<sup>1</sup> If a fax billing is selected, Company sends a copy of the bill via fax.

Company also provides its clients with the optional services such as payment processing, information or marketing inserts, and online invoice archiving. For payment processing, Company electronically processes its clients' customers' payments via online payment applications. Company can also include pre-printed inserts provided by the client with either electronic or paper bills. Finally, Company can digitally store invoices for its clients for a specified length of time.

### Discussion

Colorado levies sales tax on the sale of tangible personal property but generally not on services.<sup>2</sup> A sale generally takes place when there is a transfer of tangible personal property for money or other consideration. The transfer of tangible personal property need not be between the seller and buyer in order for there to be a sale. For example, a buyer may purchase goods and have the seller ship the goods to a third party.

The facts in this case raise the question of whether Company is selling tangible personal property (invoices) to customers. Paper invoices are clearly tangible personal property. Electronic invoices are also tangible personal property.<sup>3</sup> However, simply because tangible personal property is transferred for consideration does not necessarily mean that there is a taxable sale. Sales tax does not apply if the "true object" of the transaction is the sale of a service with an incidental transfer of tangible personal property.

To determine the true object of a transaction, we look at whether the true object of the buyer was the purchase of services or of tangible personal property. In other words, was the buyer's ultimate motivation the performance of a service with some incidental property transferred or the acquisition of tangible personal property.<sup>4</sup> As is true in most cases involving the true object test, the issue here is deceptively difficult to resolve on a conceptual level. For example, a company that hires a printer to create billing inserts that include marketing material has engaged in a taxable purchase of tangible personal property from the printer. Thus, the Department would likely view the printing of the marketing inserts as a taxable sale from the printer to Company because printing marketing material is commonly understood to be the sale of tangible personal property.<sup>5</sup>

Colorado courts have identified several factors for assessing the true object: (1) the value

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<sup>1</sup> Company described additional services but did not request a ruling on them. Therefore, the DOR will not rule on the taxability of these services.

<sup>2</sup> § 39-26-104(1)(a), C.R.S.

<sup>3</sup> Tangible personal property is property that is corporeal and is in contrast to intangible property which is merely conceptual in nature.

<sup>4</sup> *City of Boulder v. Leanin' Tree, Inc.*, 72 P.2d 361 (Colo. 2003).

<sup>5</sup> Company asks whether one coupon included at the bottom of a bill would be considered the printing of marketing material subject to tax. The Department would likely view a single coupon included at the bottom of a bill as *di minimis* and, therefore, not change the character of the billing service.

of the property compared to that of the service; (2) whether there was an alternative method of transfer; (3) the length of time intangible property provided retains its value; (4) constraints on buyer's ability to use the tangible personal property; (5) what the buyer actually does with the property after using its intangible components; (6) whether the tangible personal property represents the finished product the buyer sought; and (7) the skill and expertise used to create the tangible personal property. Ultimately, the question is resolved by whether the transaction is commonly understood to be one for a service or one for the sale of tangible personal property.

We need not examine each of these factors because we conclude that the creation of invoices is one which is commonly understood to be a service. Our conclusion is based, in part, on the fact that Company does more than just simply print or sends billing inserts. Company bullpens bills, which means Company's software will hold bills until they reach a certain amount so a customer does not get several small bills. In addition, Company can pull past account information and can provide additional information to those who are behind on their bills. We view this service to be similar to the work of an accountant or bookkeeper whose services are nontaxable even though they may provide billing invoices or other tangible products as an incidental part of their service. Because Company does more than just print and send billing invoices, we believe it is more appropriate to characterize the transaction as one for a service rather than for tangible personal service.

We note that a person engaged in the business of rendering a service is considered the consumer of the tangible personal property and must pay tax on the purchase of such tangible personal property.<sup>6</sup>

#### **Miscellaneous**

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. This ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at [www.colorado.gov/tax](http://www.colorado.gov/tax) for more information about state and local sales taxes.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter.

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<sup>6</sup> 1 C.C.R. 201-5, SR-40.

Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

Neil L. Tillquist  
Colorado Department of Revenue  
Office of Tax Policy Analysis

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