



COLORADO
Department of Revenue
Taxation Division

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GIL-07-007 (Revised)

XXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

November 5, 2008

Re: satellite receiver rental

Dear XXXXXXXXXXXX,

By letter dated December 4, 2007, the department provided you information regarding the applicability of sales and use tax to equipment your company provides to customers at a discount in conjunction with satellite TV service. The purpose of this letter is to clarify and correct information in our correspondence.

Issues

1. Is the free rental of a satellite TV receiver, which is offered with non-taxable TV service for which a charge is assessed, taxable?
2. Can the company seek reimbursement from customers for taxes due but uncollected?

Background

You state that subscribers who choose to obtain their satellite receiver pursuant to a lease are billed \$4.99 per month, plus applicable state and/or gross receipts tax. They also receive a \$4.99 credit on the same monthly bill for the first leased unit. All additional receivers are billed \$4.99 each, plus tax, per month. There is no other credit for any receiver other than the first receiver. You ask whether the credit for the first receiver is a rebate or a point of sale discount. You also ask whether the charge of \$4.99 for the first receiver is subject to sales tax. Finally, you ask whether your company can reimburse itself by collecting the tax from the subscriber if the charge for the first leased receiver is subject to tax and that tax is a use tax.

Discussion

1. *The company is liable for use tax when it provides a customer free rental of equipment as an inducement to the customer to enter into a contract for satellite TV services and rental of the equipment.*

In general, a retailer is entitled to a wholesale sale exemption when it purchases from a supplier goods that the retailer intends to resell to a customer. This wholesale sales tax exemption also applies when the retailer intends to lease the goods to the customer for more than three years or, if the lease to the customer is less than three years, the retailer obtains permission from the department to purchase the goods tax free. See, generally, §§39-26-102(23) and 713, C.R.S. customer

However, when the retailer subsequently uses goods in its inventory for its own purposes, such as marketing, then the retailer must pay use tax for its use of those goods.¹ See, Department regulation 39-26-713.2(b); compare, Utah Advisory Opinion No. 96-127DJ, 09/27/1996 (retailer must pay use tax when it offers goods at a discount in conjunction with non-taxable services), *Mercury Cellular Telephony Co. v. Calcasieu Parish of Louisiana, et al.*, 773 So 2d 914 (LA 2000), and Mass. Regs. Code 64H.1.4(1)(Example 5). Use tax is calculated based on the retailer's acquisition cost from the supplier. *International Business Machines v. Charnes*, 601 P.2d 622 (Colo. 1979).

In the circumstances you describe, the company uses the satellite receiver to market its goods and services. Therefore, the company is liable for use tax for the one-month period. This assumes, of course, the company has not previously paid sales tax on its acquisition of the equipment from the supplier.

2. *The company, not the customer, is liable for the tax.*

The incidence of taxation for use tax falls on the company, not the customer. However, and as is the case of other marketing costs of the company, the department assumes the company passes such costs onto customers through a variety of pricing mechanisms. The company is not prohibited from passing the cost of this use tax onto the customer in a similar fashion. It would be inappropriate, however, for the company to state to the customer that the company is collecting a tax for which the customer is liable to the department.

Please note that the department does not collect sales and use taxes for "home-rule" cities and counties. You can find a list of these jurisdictions by visiting our web site at:

www.revenue.state.co.us (go to Taxation > Forms > Businesses > Sales and Use > DRP 1002)

Contact those governments for information about their taxes.

The department recently enacted a regulation governing requests for tax advice. We issue both private letter rulings and general information letters. See, §24-35-103.5, C.R.S. and Department regulation 24-35-103.5. Private letter rulings are issued in response to tax questions relating to specific factual settings and are binding on the department. General information letters are issued in response to general tax questions and are not binding on the department. You can view this regulation on-line at:

<http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html>

¹ As an aside, wireless telecommunications providers that provide discounts on equipment sold in conjunction with taxable telecommunication services are not liable for use tax on such discounted equipment. See, §39-26-202(1)(c), C.R.S.

I am treating your request as a request for a general information letter. If you would like a private letter ruling, please take a moment to review the regulation and resubmit your request with the necessary information.

Pursuant to state law and department regulation 24-35-103.5, the Department will make public a redacted version of this letter. Your letter requesting this general information letter is not made public. I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments, or objection concerning the redacted letter.

Respectfully,

Office of Tax Policy
Colorado Department of Revenue