



COLORADO

Department of Revenue

Taxation Division

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PLR-12-003

May 30, 2012

XXXXXXXXXXXXXXXXXXXX
ATTN:XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Private Letter Ruling

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Regulation 24-35-103.5. This letter is the Department's private letter ruling.

Issues

1. Are the services enumerated in this ruling subject to sales or use tax when Company provides a copy/print center on customer's premise?
2. Are the same services subject to sales or use tax when Company does not provide a copy/print center on customer's premises? If not, under what circumstances would the services become subject to tax?

Conclusion

1. Charges for services, as described in this ruling, are not subject to sales or use tax, regardless of whether Company provides a copy/print service center. Company must pay sales or use tax on tangible personal property used by Company to provide the services if the property is either purchased or used in Colorado.
2. See response to Question No. 1, above. Company's charges for certain services would become subject to sales or use tax if Company does not separately state charges for tangible personal property used by Company to provide the services, as more fully described in this ruling.

Background

Company enters into facilities management ("FM") contracts with commercial customers. The principal component of the FM contract typically is the operation of a

copy/print center on customer's premise. Company provides copiers, printers, supplies, and employees to make copies and print materials. Company charges a separate fee for the copy/printer center and this fee reimburses Company for use of copiers, printers, and supplies as well as Company's personnel and indirect costs.

In addition to the fee for copy/printer operations, Company also separately charges customers fees for following services:

1. Mailroom Services. This optional service involves labor to process incoming and outgoing mail and pass through postage charges. Customers purchase and provide all materials used to provide this service.
2. Fleet Coordination Help Desk Services. This optional service includes live support to help resolve issues with copiers and printers not involved in a copy/print center. Company charges a monthly fee for each piece of equipment covered under the Fleet Coordination Help Desk Service.
3. Fleet Convenience Care. This optional service includes cleaning machines and platen glass, clearing paper jams and replacing toner, all of which are preformed on a customer operated machine outside the copy/print center. This service excludes all other operation of the machine without the production of a work product. Additionally, this service is typically used for Company's customers who have multiple locations.
4. Secretarial Services.
5. Delivery Services. This service generally includes Company delivering copiers or printers to a customer's facility. Company uses their own vehicles and charges customers a rental charge for the vehicle and service charge for the delivery. Company separately states the delivery charges from other charges.
6. Hospitality Services. This service is similar to cleaning services. In this case, Company has an employee at customer's facility who ensures machines are cleaned. This is service is typically for Company's customers who only have one location.

Company represents that it previously sought Department's guidance on whether the entire charge for Company's FM contract is subject to tax and that on or about June 5, 2008, the Department responded saying all charges on the FM contract are subject to Colorado sales tax.¹ Company states that customers agree that the charges for copy/print operations are subject to sales tax even though these charges include costs for labor. However, customers have questioned whether charges for the six services outlined above are subject to tax.

Discussion

As an initial matter, we note that Company's request for a private letter ruling is directed to the taxability of the six enumerated services and does not request the Department to rule on the taxability of the copy/printer center charges. Colorado, as do

¹ Company does not have a copy of this letter and the Department has not located a copy.

many states,² treats copying and printing charges as a taxable sale of tangible personal property rather than a non-taxable sale of services, even though the charge may include a labor cost component related to copying and printing (e.g., resizing, sorting, collating, stapling, etc.). However, we have not reviewed this issue as part of this request and do not rule on the issue here.

Colorado levies sales tax on the sale or use of tangible personal property, but not on the sale of services. §39-26-104(1)(a), C.R.S. There are, however, important exceptions to the non-taxability of services. For example, charges for labor in the manufacturing of goods made-to-order are taxable, even if separately stated. §39-26-102(12), C.R.S. Charges for services are subject to sales tax if the charges are not separately stated on the customer's invoice and the invoice includes the sale of taxable goods. Hellerstein, *State Taxation* (WG&L), ¶17.12 (The Separate Statement Rule); Department Private Letter Ruling 2009-004; Department Private Letter Ruling 2010-001; Department Private Letter Ruling 2010-004. Moreover, services that are inseparable from the sale of taxable tangible personal property are also included in the sales tax calculation, even if the service charge is separately stated on the customer's invoice. *A.O. Stores v Department of Revenue*, 19 P.3rd 680 (Colo. 2001). Sales tax will also apply to service charges sold in connection with the sale of taxable tangible personal property if the retailer priced its goods and services in such a manner as to avoid sales taxes. This ruling does not determine whether Company has improperly priced its various services in such a manner as to avoid sales tax.

Except for the caveat noted above regarding improperly priced services, none of these six services fall within the exceptions described above. Company represents that customers are not required to purchase any of these six services when the customer engages Company to provide the taxable copy/printer center. Moreover, these six services are not so intertwined with the taxable copy/printer transactions so as to make the services an inseparable part of those taxable transactions. Finally, Company represents that if a customer selects one or more of these six services, the charge(s) for those services are separately stated from the charge for the copy/printer center charge on the Company's contract with customers.

Mailroom Services

In the case of mailroom services, Company provides employees to perform the labor of processing customer's incoming and outgoing mail. Company represents that customers, not Company, provide envelopes, paper, labels, mailing lists and other related supplies. Because customers purchase these materials, there is no transfer of tangible personal property from Company to customer. Without such a transfer, there is no sale of tangible personal property. Department Regulation (39-) 26-102.10³.

² See, e.g., 9 *Vanderbilt Law Review* 231 (1956) (The true object of a contract for printing is to purchase tangible personal property even though a significant portion of the cost of production is labor.); *Utah Private Letter Rulings No. 03-015*, 02/18/2004 ("primary purpose" of transaction is to obtain a copy of medical records, not service the service of copying records. All fees necessarily incurred to sale are also taxable.).

³ You can view this Regulation on the Department's web site at www.colorado.gov/revenue/tax >Tax Library> Rules and Regulations > Final Tax Regulations > Sales and Use Tax > Regulation (39-) 26-102.10. "Sale"

Therefore, we rule that Company's charges for mailroom services as described here are not subject to Colorado sales tax.

Colorado levies use tax on the use of tangible personal property. §39-26-202, C.R.S. In cases where the primary purpose of the transaction is the use of taxable tangible personal property, use tax will apply, even if the person using the property is not the owner of the property. *A.B. Hirschfeld Press, Inc. v. City and County of Denver, et al*, 806 P2d 917 (Colo. 1991). However, we do not believe that it is correct to characterize Company as the primary user of the envelopes, mailing labels, and mailing lists supplied by the customer. Thus, we rule that Company is not liable for use tax of these materials.

Fleet Coordination Help Desk Services

This is an optional service provided to customers who have either purchased or rented a copier and/or printer and this equipment is not part of the copy/print center service. The Help Desk is a service where Company's staff provide expert assistance to customers who have questions concerning the operation of Company's copiers, printers, and other equipment. Company represents that it does not transfer tangible personal property to customers as part of this service.

As more fully discussed immediately below, the Help Desk is similar to a maintenance or warranty contract sold in connection with the sale or rental of taxable tangible personal property. Sales tax does not apply to charges for maintenance or warranty contracts if the customer has the option not to purchase the contracts when purchasing the taxable tangible personal property and the charge for such contract is separately stated. Company represents that customers who purchase or rent Company's equipment have the option to not purchase the Help Desk service. Therefore, the charge for this service is not subject to sales tax.

Fleet Convenience Care

Fleet Convenience Care is a maintenance and warranty service agreement related to equipment purchased or rented by customers. In general, charges for warranty and maintenance agreements sold in connection with the sale or rental of taxable tangible personal property are not subject to sales if the agreement is optional and separately stated.⁴ Under the facts set forth in the ruling, the charge for Fleet Convenience Care is not subject to sales tax because the service is optional and the charge is separately stated.

When a retailer offers maintenance or warranty service, the question arises whether repair or replacement parts are subject to sales or use tax. Company is considered to be the consumer of the materials used to perform maintenance or warranty work (e.g.,

⁴ See, FYI Sales 70 "Warranties and Maintenance Agreements" and Special Regulation 28 (SR 28), "Maintenance and Decorating Services" both of which can be viewed and downloaded from the Department's web site at www.colorado.org/revenue/tax > Tax Library.

replacement parts) and must pay sales or use tax on the cost of the materials at the time of purchase or use.⁵

Secretarial Services

This service is optional and Company represents that there is no transfer of tangible personal property from Company to customer as part of this service. Therefore, charges for this service are not subject to sales tax.

Delivery Services

As noted above, Company delivers copiers and printers to customer's facilities. Company represents that they use their own vehicles and charge customers a rental fee for use of the vehicle and a fee for the delivery. The transportation of tangible personal property between a retailer and purchaser is presumptively treated as a non-taxable service if the transportation service is both separable from a taxable sale of goods and separately stated on a written invoice or contract. Special Regulation 18 (SR 18), "Transportation Charges."

Company represents that customers have the option to not use Company's delivery services and that transportation charges are separately stated on customer's invoice. Company's delivery charges meeting these conditions are not subject to sales or use tax.

Hospitality Services

As described by Company, hospitality is a service (cleaning) and, therefore, not subject to sales or use tax. Items used to perform hospitality services that are billed to the customer as a separate and distinct item from the hospitality service charge are considered retail sales of tangible personal property. In such cases, Company should collect sales tax from customers. If the charge for such items is not separately stated on the customer's invoice, then the Company, as a service provider, is considered the consumer of those items and must pay sales or use tax when it acquires or uses them.

Miscellaneous

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/revenue/tax for more information about state and local sales taxes.

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

s See, footnote 4

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.

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. 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,

Office of Tax Policy
Colorado Department of Revenue