COLORADO
Department of Revenue
Taxation Division

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PLR-16-004

April 6, 2016

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Re: Amenity Fee

Dear XXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Department Regulation 24-35-103.5. This ruling is binding on the Department to the extent set forth in Department Rule 24-35-103.5.[1] It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Is an amenity fee charged by a hotel or lodging provider to the customer subject to tax?
2. Is an amenity fee that is passed on from the hotel or lodging provider to Company subject to tax?
3. Is an amenity fee that is paid by Company to the amenity service provider subject to tax?

Conclusion

1. The amenity fee is subject to tax because the amenity fee is included in the charge for taxable living accommodations.
2. The amenity fee that the hotel or lodging provider passes on to Company is not subject to tax because there is no sale or exchange of tangible personal property. Company is essentially providing a form of concierge services.
3. Amenities that are services are not subject to tax and, thus, the amount paid to the amenity service provider by Company is not subject to tax.

Background

Company contracts with hotels and other lodging providers to provide guests with a variety of services, such as golfing, kayaking, ski lift tickets, and other amenities. Company

[1] Because this ruling is not addressed to the lodging provider or amenity service provider, this private letter ruling is not binding on the Department with respect to the lodging provider or amenity service provider.

contracts with golf courses, ski resorts and other entities that will actually provide these services ("amenity service providers"). The lodging provider will pay Company a flat fee ("amenity fee") for each occupied night, regardless of whether the amenities are used. Company will then pay the service amenity providers in accordance with the contract between the two entities. The lodging provider will increase the lodging charge by the amount of the amenity fee, but the amenity fee is not separately stated on the customer's invoice. The lodger / customer does not have the option to not pay the amenity fee. Company is purely a middle man in these transactions because they do not provide or consume the service or amenity. Company proposes that the lodging provider will collect the sales tax on amenity fee and remit that amount to Company who will forward the tax to the amenity service providers and the amenity service provider will report and remit the tax.

Structure of Analysis

1. Is the transaction between customer and the provider of living accommodations taxable under § 39-26-104(1), C.R.S.?
    a. Is the item the taxable sale of a room or accommodation as defined in § 39-26-102(11), C.R.S.?
    b. If the item is not purely taxable living accommodations, does the item contain both potentially taxable and nontaxable elements?
        i. If it contains both potentially taxable and nontaxable elements, are the nontaxable components and taxable components separable and separated?
        ii. What is the true object of the customer in the transaction?
2. Who must collect and remit the tax?
3. Is the provisioning of service or goods by the amenity service provider to customer a separate transaction from the provisioning of living accommodation to customer?
    a. How is tax calculated and collected?

Discussion

Colorado levies sales tax on the sale of living accommodations that are for less than thirty consecutive days.[2] Colorado does not levy sales tax on most other services, including the amenity services identified in the request. However, when a retailer combines taxable and nontaxable services together and the consumer does not have the option of purchasing them separately, then sales tax is calculated on the entire charge.[3] In this case, the first transaction at issue is taxable living accommodations bundled with nontaxable amenity services into one price. The guest does not have the option to purchase them separately. We next look at what the true object of the customer is. In this case, the true object of the

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[2] § 39-26-104(1)(f), C.R.S.

[3] See, Hellerstein, *State Taxation* (WG&L), 1J17.12 (The Separate Statement Rule). Colorado Department of Revenue Private Letter Ruling (PLR) 10-001. The Department has permitted retailers who combine taxable and nontaxable items into a single charge to apply tax only to the taxable portion of a bundled charge when the "true object" of the transaction is the non-taxable item but the taxable item is not insubstantial. For example, the Department has approved such a procedure for hunting lodges where the true object is the provisioning of outfitter services which are a very substantial, if not the dominant, part of the bundled charge in relation to the charge for living accommodations. The circumstances described in this ruling request do not suggest that such an approach is warranted in this case.

customer is a room or accommodation and not the amenity fee itself. The amenity fee is strictly, as the name suggests, an amenity and is not the reason the customer purchases a room or accommodation. Therefore, the entire charge is subject to tax as a living accommodation.

Although Company considers the amenity fee included in the lodging price to be the payment of the amenity provided to the lodger or customer, the Department cannot view the amenity fee included in the lodging price as payment for the amenity used by the customer because the Department considers this fee payment for the lodging. The customer does not have the option to obtain lodging without payment of the fee; thus, it is part of the payment for lodging.

Company proposes that the amenity service providers report and remit the tax. This is not permitted under Colorado law. Colorado law imposes sales tax collection and reporting on the retailer.[4] The retailer is the person who makes a retail sale of a taxable goods or services.[5] In this case, the lodging provider is the retailer because the lodging provider is selling taxable living accommodations. Therefore, the lodging provider is the entity responsible for reporting and remitting the tax on this fee to the Department. This tax cannot be reported or paid by the amenity service providers.

Company also asks whether the amenity fee the hotel or lodging provider collects and passes on to Company is subject to tax. This transaction between the hotel or lodging provider and Company is not taxable because Company is providing a service to the hotel or lodging provider. Essentially Company is acting as a form of concierge service by agreeing to arrange for the provision of services to the hotel and lodging provider's customers.

Lastly, Company asks whether their payment of the fee to the amenity service provider is subject to tax. Company represents that the amenities they provider are generally services.[6] Colorado does not generally tax services; thus, the services outlined in the ruling request (green fees and ski passes) are not subject to tax because they are services.

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

This ruling is premised on the assumption that Company has completely and accurately

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4 § 39-26-105(1)(a)(I)(A), C.R.S.

5 § 39-26-102(8), (9), C.R.S.

6 Company represents that green fees and ski passes are examples of amenities that would be provided. These transactions are not taxable because they are services. Although we do not rule on the issue specifically, if the amenity is principally the provision of tangible personal property (kayak), the provision of such tangible personal property would be subject to tax.

disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. The ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling and 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.

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,

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.