



COLORADO
Department of Revenue

Taxation Division

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GIL-15-010

April 16, 2015

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Banquet and Event Provider Charges

Dear XXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance to determine the taxability of certain banquet and event provider charges.

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 > 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 Department 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 following subject to Colorado sales or use tax:

1. Guarantee charges
2. Room set up fees
3. Excessive labor fees (services of additional personnel required for an event)
4. Off-site fees (delivery and set up at a non-banquet location, but still at the host’s property)
5. Below minimum fees(fees charged if the event does not meet the minimum requirement)
6. IT lines and router use fees
7. Electricity (charged to groups requesting a special electrical connection such as electric for a laptop or at an exhibit table)
8. Audio visual service fee (20% fee on all audiovisual equipment rentals)
9. Chef and server fees

Discussion

Guarantee Charges. Colorado levies sales tax on the retail sale of tangible personal property, but does not generally tax services.¹ Colorado levies sales tax on the rental of hotel room and similar living accommodations. Banquet rooms in hotels are not subject to tax if they are exclusively used for dining or are used for purposes other than taxable living accommodations.² If the banquet room is used in a taxable manner, the event is canceled, and the hotel or vendor charges a cancellation fee, tax applies when the cancellation charge is greater than fifty percent of the banquet room rate.³

Room set up and excessive labor fee. Colorado levies sales tax on the provision of meals served in restaurants, hotels, and by caterer.⁴ The price of a meal at a restaurant includes a wide variety of cost components, including the cost of the food and the labor to prepare and serve meals. A restaurant cannot separately state the charges for these cost components and only apply tax to the food and not to the labor components.⁵ The issue here is whether the charges for room set up and extra labor are included in sales calculation for the meals prepared and served in the banquet room by the hotel. Charges for banquet room set up and for extra labor are taxable if they relate to the catering of prepared meals. For example, labor fees for extra waiters, service persons, cooks, and dishwashers are integral aspects of catering service and fees, even if separately stated, would likely be part of a taxable charge of a caterer.⁶

Off site fees. We understand off site fees to be charges relating to serving meals at a location other than the hotel. As in the case of room set up fees, this charge is included in the sale tax calculation because a restaurant's charge for space is inseparable from the provision of the meal. However, if the charge for off site location is a charge by a third party for the space and not a charge by the hotel then the charge is not included. However, if the hotel pays the third party and the hotel passes the cost on to the guest, then the charge is included in the tax calculation as would the cost of a banquet room owned by the hotel.

Below minimum fees. We understand a below minimum fee to be the smallest charge for the provisioning of a banquet room, meals, and other costs. This fee is taxable if it relates to the catering service. For example, if the hotel charges \$30 per dinner, but requires a minimum of 20 guests, then the below minimum fee is taxable as part of the taxable meal.

IT lines and routers. There are a variety of factors that the Department considers when determining whether a charge is for the taxable rental of tangible personal property or nontaxable services. In general, the Department will view a charge for the use of tangible personal property as a taxable rental charge if the consumer has significant control over the property. If the vendor is primarily in control of the property, then the vendor will likely be viewed as the consumer of the use of the property. The Department will likely view charges to guests for such services as non-taxable service and require the provider pay tax to the provider of the IT lines and router.

¹ See generally, § 39-26-104, C.R.S.

² The banquet room charge cannot be a disguised food charge. If one can rent a banquet room without purchasing food or incurring a food charge, then the banquet room is likely not subject to tax.

³ 1 CCR 201-5, Special Regulation 22

⁴ § 39-26-104(1)(e), C.R.S.

⁵ However, tips and gratuity are generally not included in the sales tax calculation unless they are not optional.

⁶ 1 CCR 201-5, Special Regulation 13

Electricity. If the vendor is supplying a special electrical connection, then the Department will likely view the vendor as the consumer if the vendor has primary control over the connection, particularly if the vendor retains the connection after use by the guest. However, this charge may be taxable to the extent it relates to tangible personal property such as extension cords or surge protectors, etc.

Charges for audio / visual equipment. The Department would likely view this as the taxable rental of tangible personal property because the consumer presumably is in control of the equipment. The person collecting the charge will have the obligation to collect and remit the tax.

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 about the applicability of those taxes. Visit our web site at www.colorado.gov/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,

Neil L. Tillquist
Colorado Department of Revenue