

STATE OF COLORADO

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GIL-2007-27

XXXXXXXXXXXXX
Attn: XXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

December 4, 2007

Re: Taxability of consumer research and service quality reports

Dear XXXXXXXXX,

This letter is in response to your letters to the Colorado Department of Revenue, dated June 2, 2007, re: taxability of drug screening medical kits. We apologize for the time it has taken to respond to your inquiry.

Colorado Department of Revenue provides informational letter as a service to taxpayers. These letters represent the opinion of knowledgeable and experienced department staff and can be a valuable resource in making informed decisions regarding your tax obligations. However, these letters are not binding on the department. §24-35-103.5, C.R.S.

Issue

Are consumer research and service quality reports taxable in Colorado?

Background

Your company supplies syndicated consumer research and service quality reports to the communications and media markets. Your clients are given the option of receiving this information electronically via the web, on hard copy and/or CD Rom. You state that the product is intangible market research and service quality reports and data. Data is collected and available for customers upon signing a contract.

Discussion

Broadly speaking, Colorado imposes tax on the sale of tangible personal property. §39-26-104(1)(a), C.R.S. "Tangible personal property" is defined as corporeal personal property. §39-26-102(15), C.R.S. Services are generally not taxable in Colorado.

Books, videos, magazines, trade publications are clearly taxable tangible personal property, even though they are the culmination of the personal services of writers, researchers, and analysts and

contain intangible intellectual property, research, and data. Similarly, licensed “canned” software, which is typically protected intellectual property, is taxable when sold on CD or on other tangible mediums. Special Regulation 7.

On the other hand, some transactions will be characterized as non-taxable services even though some incidental tangible personal property is exchanged. See, Special Regulation 52 (Service Enterprises). The sale by an author of a manuscript to a publisher is a non-taxable sale of a service and the medium in which it is sold (written manuscript) is treated as incidental to the sale. Special Regulation 52.

The distinction between sale of taxable tangible personal property and non-taxable services is sometimes stated in terms of whether the “true object” of the transaction is the acquisition of a service or tangible personal property. That is, the transaction is taxable if the true object is the sale of tangible personal property, and not taxable if the true object is the service. Although the true object test is easy to state in the abstract, it is not always easy to apply in practice. See, *City of Boulder v. Leanin’ Tree*, 72 P3d 361 (Colo. 2003).

Often a crucial factor in this type of determination is whether the property is sold only to a specific customer or sold repetitively to many customers. See, Special Regulation 52. For example, a sale of a film to a client is generally considered a non-taxable sale of a service. Similarly, a sale of a manuscript to a publisher is a non-taxable service. However, repetitive sales of copies of the same film (e.g., sales or rentals by a video store) or same book are clearly taxable sales of tangible personal property. Special Regulation 52.

The tax treatment of market research and surveys is similar. Market research or surveys which are created for a specific customer is a non-taxable service, even though the report may be submitted to the client in a hard-copy or CD form. However, market research and surveys that are repetitively sold to a variety of customers are indistinguishable from sales of trade publications, scientific periodicals, and other similar publications. As such, the research and surveys are taxable.

In determining whether the research is for a specific client or is for repetitive sales, the department will consider whether, and the extent to which, the research was performed in response a specific client’s order. For example, research performed prior to a client’s request, or research performed after a client’s request, but which would have been performed regardless of the request, is not customized market research. Compare, e.g., California Sales Tax Counsel Ruling No. 515.0012.

Other states have taken a similar approach to market research and surveys. Mass. Regs. Code 64H.1.3(8) (furnishing information on tangible medium to two or more customers is taxable and non-taxable if report for only one customer); Massachusetts Letter Ruling 00-13 (individualized reports are non-taxable; reports sent electronically non-taxable); Virginia Public Document Ruling No. 01-219 (market report produced for multiple industry members and purchased on a subscription basis is taxable).

It is not clear from your letter whether the market research and surveys you provide are performed at the request of a specific client or are sold repetitively to a variety of clients. I note that you state that your market research and survey reports are syndicated. This strongly suggests that the material is taxable if delivered in a tangible medium. If the market research is performed at the request of a single client, we will consider the transaction as a non-taxable service and the hard copy or CD incidental to the sale. If, on the other hand, your market research is distributed to two or more customers, then it is subject to tax if it is delivered in the form of a tangible medium such as a hard-copy or CD.

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

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