

STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-2008-1

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

January 8, 2008

Subject: Sales Tax
Re: telecommunications, computer software, freight, training, repair

Dear XXXXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated October 26, 2007, re: taxability of products and services.

Issue

Does sales or use tax apply to the following products and services: custom software, service-only (no hardware or software purchased), installation service, repairs, freight (if handling, insurance is included, but not separately stated), training?

Background

Your company sells and installs telecommunications equipment. Equipment includes hardware, canned and custom software, and installation of your communications systems for customers. Each item is separately stated on the invoice, including freight costs. Your company provides training at the request of customers. The company also offers repair services at the company's warehouse located in Minnesota and ships the repaired equipment back to the customer. Your company holds a Colorado sales tax license.

Discussion

Custom software

Generally, custom software is not subject to Colorado sales tax. You can view and download the department's regulation regarding software by going to our website at: www.revenue.state.co.us and clicking on "Taxation" > "Publications/Resources" > "Regulations" > "Final Tax Regulations" > "Sales and Use Tax" > "SR-7 Computer Software."

The department collects and enforces sales and use tax for a number of cities, counties and special districts, all of which levy tax on software in the same manner as the state sales tax. However,

please note that certain cities and counties, referred to as “Home-rule” cities and counties, are authorized to enact and enforce their own sales and use tax, which may be different from the state tax. For a list of these home-rule cities and counties, see department publication DRP 1002, which is also available on our web site under “Taxation” > “Forms” > “Businesses” > “Sales and Use Tax.” Contact these home-rule jurisdictions if you have questions about their taxes.

Service only (no purchase of hardware or software)

It is not clear what is encompassed here. Generally, Colorado does not levy sales or use tax on services. §39-26-104(1)(a), C.R.S.

Installation service

Generally, Colorado does not levy sales or use tax on services. §39-26-104(1)(a), C.R.S. If the installation service is performed in conjunction with the sale of tangible personal property, then the service is taxable, even if separately stated, if the service is not “separable” from the sale of the equipment. *A.D. Stores v Department of Revenue*, 19 P3d 680 (Colo. 2001). In determining whether a service is “separable” from the sale of the equipment, the department will consider whether the purchaser has a realistic option of acquiring the equipment without the installation service. For example, if the company does not sell the equipment without also the installation service, or does not warrant the equipment without its installation, or the equipment is such that only the company is capable of installing the equipment, then the department will likely find that the installation service is not separable and require that the tax be collected on the price of equipment and installation services.

Repairs

Generally, Colorado does not levy sales or use tax on services such as repair service. §39-26-104(1)(a), C.R.S. Tangible personal property that is sold as part of the repair service is subject to sales tax.

Freight

Generally, transportation charges are not taxable, unless they are not separable from the sale. You can view and download the department’s regulation on the taxability of transportation charges by going to the department’s website, referenced above, and go to “Taxation” > “Publication/Resources” > “Regulations” > “Final Tax Regulations” > “Sales and Use Tax” > “SR-18 Transportation Charges.” Note that if the transportation charge is taxable, then the insurance cost, which you indicated is not separately stated, is also taxable.

Training

Colorado does not levy sales or use tax on services such as training. §39-26-104(1)(a), C.R.S.

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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