STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

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GIL-13-020

August 20, 2013

XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXX
ATTN: XXXXXXXXXX
XXXXXXXXXXXXXXX

Re: Electronically Delivered Software

Dear XXXXXXXXX,

You submitted on behalf of XXXXXXXXXX ("Company") a request for guidance on the applicability of sales and use tax on electronically delivered software.

The 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 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

1. After the exemption for electronically delivered software is reinstated July 1, 2012 will products such as e-books and music purchased and delivered digitally also be exempt or will these products remain taxable?
2. Before the exemption was suspended, Special Regulation SR-7 described the requirements for determining whether software, Application Service Providers ("ASPs") and maintenance agreements were taxable or exempt. Will SR-7 be reinstated on July 1, or will there be another Special Regulation to help make determinations on the taxability of these transactions?

3. How does the Department apply sales and use tax on ASPs and similar services accessed through the internet?

Background

Company provides information to decision makers in the financial, legal, tax and accounting, healthcare, science and media markets throughout the world. One aspect of Company's business is to provide indirect tax compliance support.

Discussion

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible personal property. §39-26-104(1) and 202, C.R.S. Tangible personal property is defined as "corporeal personal property." §39-26-102(15), C.R.S. Corporeal is typically defined as that which is physical, tangible, or material in nature.[1] In contrast, intangible personal property does not have a physical existence and is conceptual in nature, such as a contract, corporate stock, and commercial goodwill.

Sales of books, music and movies either in the form of paper, CD, DVD, celluloid or electronically delivered digital goods are subject to tax.

Effective July 1, 2012, Colorado legislature modified the definition of tangible personal property to exclude electronically delivered computer software. In the legislative declaration for this legislation, the legislature stated that the amended definition does not alter the tax treatment of "digital goods", "application service providers", "software as a service", or "cloud computing". Therefore, the Department will continue treating the sale of electronically delivered goods, such as music, movies, and books, as taxable sales of tangible personal property.

Prior to July 1, 2012, the definition of tangible personal property expressly included electronically delivered computer software. The statute also addressed maintenance agreements, apportionment of tax for sales where the computer software was used in multiple states, among other issues. Special Regulation 7 addressed these issues. This regulation is repealed effective July 1, 2012. The Department is considering whether to promulgate a new regulation to replace SR-7, but a final decision has not been made at this time.

Effective July 1, 2012, charges by application service providers (ASP) are not subject to sales tax to the extent the ASP's charges are for use of computer software. An ASP is defined in § 39-26-102(15)(c)(II)(a), C.R.S. as,

> an entity that retains custody over (or "hosts") software for use by third parties. Users of the software hosted by an ASP typically will access the software via the Internet. The ASP may or may not own or license the

[1] Merriam-Webster Desk Dictionary (1995); American Heritage College Dictionary, 3rd Ed. 1993.

software, but generally will own and maintain hardware and networking equipment required for the user to access the software. The ASP may charge the user a license fee for the software (in instances where the ASP owns the software) and/or a fee for maintaining the software/hardware used by its customer.

An ASP, whose computer software or equipment is located in Colorado, is subject to use tax for those items.

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/revenue/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,

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