



COLORADO
Department of Revenue

STATE OF COLORADO

State Capitol Annex
P. O. Box 17087
Denver, CO 80217-0087

John Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-16-018

August 19, 2016

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Management Fee

Dear XXXXXXXXXXXX,

You submitted on behalf of a client ("Company") a request for guidance regarding the taxability of a management fee.

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, but 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 Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

Is Company's management fee subject to sales tax?

Background

Company provides repair and maintenance services for large fleets of motor vehicles. Company performs all scheduled (oil changes) and non-scheduled maintenance (damage due to accidents). As part of these services, Company maintains data on all maintenance performed, which includes the vehicle, vehicle type, date of maintenance, and repair work, as well as other information. Company charges clients a fee, referred to as a management fee, to access this

data. Customers access this data by logging onto Company's website and they can run reports. Company separately states on client invoices charges for parts, labor, and the management fee.

Structure of Analysis

To determine whether the fee is subject to tax, the Department will examine the following questions:

1. Is the fee the sale of taxable property or service under §39-26-104, C.R.S.?
 1. Is the fee inseparable from the sale of taxable tangible personal property under § 39-26-104(1)(a), C.R.S.?

Discussion

Colorado imposes sales tax on the sale of tangible personal property and a limited number of services.¹ The retail sale of auto parts is a taxable sale of tangible personal property. The management fee provides access to Company's database, which is computer software that clients access to obtain information. A company that retains custody of computer software for use by third parties is commonly known as an application service provider (ASP). Computer software made available to consumers by an ASP is not tangible personal property and, therefore, charges for access to such software is not subject to sales tax.²

However, charges for nontaxable services are included in the tax calculation for taxable goods if the buyer is required to purchase the nontaxable service as part of its *purchase of taxable goods*. In *A.D. Stores v. Department of Revenue*, 19 P.3rd 680 (Colo. 2001), the Court held that charges for non-taxable services that are not separable from the sale of taxable goods are included in the calculation of sales tax, citing with approval *Info. Servs., Inc. v. Comm'n of Revenue*, 718 N.E.2d 1256, 1258 (Mass. App. Ct. 1999) in which the court concluded that optional services were not taxable because they were separable from the ultimate sale of the taxable goods.³ Therefore, if Company's client must purchase the management service when using Company's repair and maintenance service, then the management fee is included in the calculation of sales tax, even if the price for the management fee is separately stated from the taxable sale of auto parts.

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.

¹ § 39-26-104(1), C.R.S.

² § 39-26-102(15), C.R.S.

³ This rule regarding non-optional services is applied in a host of situations, from non-optional services in hotels, transportation, and auctioneers (see department Special Rule Sales 18 (Transportation), SR Sales 22 (Hotels), 39-26-102(1.3) (auctioneers) to the closely related issue of optional motor vehicle fleet coordination and convenience services (see private letter ruling PLR 09-004 (fleet coordination and convenience care services)

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 Tillquist
Colorado Department of Revenue
Office of Tax Policy & Analysis