

STATE OF COLORADO

DEPARTMENT OF REVENUE

State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
(303) 866-3091
FAX (303) 866-2400



GIL-2007-14

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXXXXXX.
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX

December 4, 2007

Re: club meal package

Dear XXXXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated June 12, 2007, re: tax reporting for night club / restaurant meal package. We apologize for the time it has taken to respond to your inquiry.

Issue.

Does the night club responsible for reporting and remitting sales tax of the restaurant?

Background

Your firm represents a night club that offers a special package with a near-by restaurant. A purchaser of the ticket is entitled to a dinner at the restaurant and tickets to a show and dessert at the night club. The night club collects all of the money from the customer and then pays the restaurant for its portion. In the past, the restaurant was remitting the sales tax on the dinner, and the night club was remitting the sales tax on the dessert. You ask whether this procedure is correct in light of the fact that the night club was collecting all of the money from the customer.

Discussion

With certain assumptions, the Department will treat the night club as a collecting agent for the restaurant.

It is not clear from the facts you provided whether the night club is acting as the collecting agent for the restaurant; or whether the restaurant and night club are acting as a joint venture to provide the meal package. If a person collecting tax acts only as the agent for its principal, then the agent does not have the responsibility of reporting to the Department taxes collected on behalf of the principal. The agent, however, remains jointly and severally liable to the department for any trust fund taxes the agent converts to its own use. In the case of a joint venture, the Department will treat both entities as retailers, each jointly and severally liable for the sales tax for the entire package. A new sales tax account should be created and a return filed under the new account name. This would be particularly appropriate if the two retailers intend to continue offering the entertainment package on a long term basis.

Under the circumstances presented in your letter, and assuming that this arrangement is temporary in duration, it is acceptable to the department that, for reporting purposes, each retailer report sales and taxes for only that

portion of the meal that it provides. However, the department does not by this letter determine that the night club is merely the collecting agent of the restaurant.

To be clear, even if the night club is only the collecting agent of the restaurant, the night club remains liable for any trust funds it collects, whether for sale of the meals it provides or for sales of meals provided by the restaurant, but converts to its own use. The restaurant, as the principal, would also be responsible for any failure of its collecting agent, the night club, to collect and/or remit sales tax to the restaurant for the restaurant meals.

I apologize for any confusion resulting from past communications with the department. This was an unusual question and one which the call center, which typically handles more general questions, does not often deal.

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,

Steve Asbell
Taxpayer Service Division
Phone 303.866.3889
Email sasbell@spike.dor.state.co.us