



**COLORADO**  
Department of Revenue

Taxation Division

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PLR-17-004

July 14, 2017

XXXXX  
Attn: XXXXXXXXX  
XXXXXXXX  
XXXXXXXX  
XXXXXXXX

Re: Membership Fees

Dear Mr. XXXX,

You submitted on behalf of XXXXXXXXXXXX (“Taxpayer”) a request for a private letter ruling to the Colorado Department of Revenue (“Department”) pursuant to Department Rule 1 CCR 201-1, 24-35-103.5. This letter is the Department’s private letter ruling. This ruling is binding on the Department to the extent set forth in Department Rule 1 CCR 201-1, 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

**Issues**

1. Is Taxpayer’s sale of XXXXX or XXXXX membership fees subject to Colorado sales or use taxes?
2. Is the charge for XXXXX subject to sales tax?

**Conclusions**

1. Taxpayer’s sale of XXXXX or XXXXX membership fees are not subject to Colorado sales or use taxes.
2. The charge for XXXXX is not subject to sales tax.

**Background**

Taxpayer operates a XXXXXX entertainment business in multiple states, including Colorado. Taxpayer’s guests are able to participate in various golf-specific games at the Taxpayer’s establishment. Taxpayer provides guests with golf clubs, golf balls, and XXXXX. As part of the various games, guests hit golf balls onto Taxpayer’s outfield. XXXXXXXXXXXXXXXX

Company has two different kinds of memberships. The XXXX membership fee is a nominal, one-time charge required for all who wish to participate in games at the facility. It entitles the member to use the facility’s golf clubs when they pay for the use of a golf bay in order to engage in golf play. The XXXX membership fee is more than a nominal amount and is charged on a monthly basis and includes unlimited use of a XXXXX,

unlimited play in golf bays during specific hours, a nominal food discount and a complimentary membership for accompanying guests.

Taxpayer's golf bays are available on a first-come, first served basis. However, Taxpayer also sells XXXXX, where each XXXXX allows a guest to jump to the front of the line for use of a golf bay.

In addition to golf game revenue, XXXXX, and membership fees, Taxpayer offers food and drink for sale from a full service restaurant and bar area. Taxpayer's charges for food and drink are separate and optional from any charges for membership fees, golf games, XXXXX, or other sales transactions.

### **Structure of Analysis**

To determine whether sales or use tax is due, the Department will examine the following questions:

1. Does the sale of the membership include the sale or use of tangible personal property pursuant to § 39-26-104(1), C.R.S.

### **Discussion**

#### *1. Membership Fees.*

Colorado imposes sales tax on the sale of tangible personal property but not generally on the sale of services.<sup>1</sup> Taxpayer argues that the true object of the XXXXXXX membership fee is a non-taxable entertainment service. We agree. We note that members can use their own golf clubs but neither the XXXXX nor XXXXX membership fee is reduced in such circumstances. This suggests that the value of the transaction rests in the opportunity to participate in golf games rather than the use of the tangible personal property.

One factor we typically consider in evaluating whether the true object of a transaction is a sale of services or the sale or rental of tangible personal property is whether the property is incidental.<sup>2</sup> In this case, we considered whether the golf balls and clubs are incidental to the opportunity to play golf. We conclude that these items are incidental. The balls and clubs are but some of the physical assets made available to guests so that they may enjoy the opportunity to play golf. If Company were to also provide, for example, a chair in which to rest during between play, we would view the chair as nothing more than incidental to the main activity of playing golf. For these reasons, we conclude that the true object of the transaction is a service and not the rental of taxable tangible personal property.<sup>3</sup>

#### *2. Sales tax on the sale of golf games.*

The right to occupy the bay and play golf are nontaxable services. Although the inclusion of golf clubs might raise issues of a mixed transaction, for the reasons discussed in section 1, above, we conclude that the charge for playing golf is not subject to tax.

#### *3. XXXXX*

The charge for XXXXX is a separately sold "service" and is not subject to tax.

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<sup>1</sup> § 39-26-104(1), C.R.S.

<sup>2</sup> See, e.g., *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361, 363 (Colo.2003) and GIL 12-001.

<sup>3</sup> The Department contacted several home rule cities and all treated similar transactions in the same manner.

**Miscellaneous**

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and 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](http://www.colorado.gov/revenue/tax) for more information about state and local sales taxes.

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. This ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling 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 version of the ruling.

Sincerely,

Neil L. Tillquist  
Colorado Department of Revenue

**This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.**