



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy Analysis
P.O. Box 17087
Denver, CO 80217-0087
dor_taxpolicy@state.co.us

PLR 20-009

December 4, 2020

XXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Sales Tax on Cable Television

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX (“Company”) to the Colorado Department of Revenue (“Department”) pursuant to 1 CCR 201-1, Reg. 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 1 CCR 201-1, Reg. 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

Whether state and state-administered local sales taxes apply to Company’s sales of Core Service Packages, Premium Channels, Sports Packages, Pay-Per-View Events, and Video On Demand content (collectively the “Subject Transactions”), as each is described herein.

Conclusion

Company’s sales of the Subject Transactions are not subject to state and state-administered local sales tax.

Background¹

Company provides cable television services,² along with other services not at issue here, in a number of states, including Colorado. Subscribers first choose one of a number of service packages offered by Company, almost all of which include certain core elements (a “Core Service Package”) described below. Company charges a single, monthly fee for each Core Service Package. Subscribers may augment any of the Core Service Packages by selecting from among numerous optional service offerings (“Optional Services”). Company charges a separate fee for each Optional Service.

¹ This section generally recites the statements of fact set forth in the request as required by paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5. The recitation of particular facts in this section is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be redacted as required by section 24-35-103.5(5), C.R.S.

² The descriptions herein of particular transactions as “services” reflect the Company’s characterization of the transaction, and may not reflect the Department’s reason for concluding they are exempt from or not subject to tax.

Core Service Packages

Each Core Service Package includes the right to view a collection, or bundle, of pre-assembled television channels. Core Service Packages also often include—either for a temporary period or indefinitely—one or more Premium Channels as described below. The overwhelming majority of channels included in any Core Service package display scheduled programming that is determined by the third-party channel operators.

Core Service Packages also allow subscribers access to “on demand” programming—content stored by the Company on remote servers that is available for viewing at a time of the subscriber’s choosing. A substantial portion of this “on demand” programming consists of content owned by the operators of channels included in the package. Company also includes access to additional “on demand” programming that Company itself prepares or acquires from other third parties. Content owners exclusively determine which content to make available “on demand,” and for what periods of time.

Core Service Packages also include digital video recorder (“DVR”) service, which allows the subscriber to record almost any schedule program for later viewing. Recorded programming is saved either in remote (“cloud”) storage devices maintained by Company or third parties, or on hardware within the subscriber’s premises. Company limits the amount of programming a subscriber may store at any one time.

Optional Services

Subscribers may augment any of the Core Service Packages by selecting from among numerous Optional Services detailed below.

Company offers the option to purchase premium movie channels, as well as channels providing a variety of niche programming, such as kid, fitness, and ethnic programming (“Premium Channels”). Most Premium Channels provide both scheduled programming and access to content “on demand.” With the exception of instances where a premium channel is bundled with a Core Service Package, Company charges a separate monthly fee for each Premium Channel.

Company sells channels or packages of channels that allow subscribers to view live sporting events and related content, typically focused on one of the major professional sports leagues (“Sports Packages”). Like the Premium Channels, most Sports Packages include both scheduled and “on demand” programming. Company charges a separate fee for each Sports Package, either on a monthly or per-season basis.

Subscribers may purchase the right to view individual events, such as boxing or wrestling matches, for varying one-time charges. (“Pay-Per-View Events”). These Pay-Per-View events are almost always watched live. However, certain Pay-Per-View Events may remain available for viewing for a period of time after the live broadcast.

Finally, Company offers additional stored content, which may be viewed at a time chosen by the subscriber for a separate fee (“Video On Demand”).³ Typically, the subscriber pays a one-time fee for the right to view the selected content for a specified period (e.g., \$4.99 may be charged for the right to view a movie during a 48-hour period). Content owners determine what content to make available within Company’s Video On Demand service and for what periods of time.

Viewing Options

Subscribers commonly watch the content delivered by Company on television screens. However, subscribers may access content with other devices as well. Those with smartphones or tablets may download a free software application that enables them to view most of the same content available on their televisions. They may also use a laptop or desktop computer to access content by logging into their accounts through Company’s website.

Depending on the hardware used and programming involved, subscribers may enjoy the ability to pause, rewind, and fast forward viewed content. For example, provided the subscriber has updated hardware, scheduled programming watched on a television may be paused for limited periods, and then played back in a delayed fashion or fast-forwarded to return to the scheduled display. Programming saved to a DVR device may also be paused, rewinded, or fast-forwarded by the subscriber.

Content stored on a “cloud” DVR device, and selected “on demand” programming, may be downloaded (“checked out”) for off-line viewing on mobile devices. Company limits the amount of content that may be downloaded at any one time, and downloaded content is automatically deleted from a subscriber’s device after a specified period if not affirmatively “checked in” by the subscriber.

Content Delivery and Management

Company delivers content to its subscribers’ premises via fiber optic cables (which transmit data through light pulses) and coaxial cables (which transmit data through radio frequency signals). Company’s signals are digital and encrypted. A TV-set-top box (also known as a digital cable box, digital converter box, or digital receiver) will de-encrypt the signal for viewing on digital televisions. When subscribers access content on their mobile devices and computers, the content is generally delivered through a combination of data packets sent across the Internet (again, generally using fiber optic technology) and cellular or WiFi signals (using radio frequencies).

The overwhelming majority of content delivered to subscribers is stored, if at all, on servers remote from subscribers, and is delivered to subscribers on a transient basis. That is, once a content signal is received and converted to images for display on a television or other subscriber device, the signal disappears. In particular, most Video On Demand purchases are delivered to subscribers in this manner. The purchaser does not receive a full, finished copy of the purchased content. Instead, the content is transmitted piecemeal as it is watched, with each

³ Company also offers copies of certain content that may be purchased, downloaded, and thereafter owned by the purchaser. Company did not seek a ruling regarding the tax treatment of such sales, and the Department, therefore, makes no ruling on such sales.

signal conveying a portion of the content and disappearing as soon as it is converted into a viewable image. The only exceptions to this practice—i.e., the only instances in which a subscriber maintains a complete recording of any content—are when a subscriber stores a program on a DVR device or downloads a program to a mobile device, as discussed above.

Discussion

The Company's Subject Transactions are not subject to state and state-administered local sales tax. Colorado levies a sales tax on sales of tangible personal property and certain enumerated services.⁴ The classification of a transaction as a sale of tangible personal property, or a sale of a service, is based upon the transaction's true object.⁵ The true object test looks to the totality of the circumstances in order to characterize transactions involving the provision of both tangible personal property and intangible property or services.⁶ Specifically, the test attempts to "identify characteristics of the transaction at issue that make it either more analogous to what is reasonably and commonly understood to be a sale of goods, or more analogous to what is generally understood to be the purchase of a service or intangible right."⁷

Applying the true object test to the Subject Transactions, we conclude the transactions at issue are mixed transactions that are more analogous to a service. The content delivered by Company, including movies, television shows, and pay-per-view content, is tangible personal property. However, provision of these items of tangible personal property to subscribers via fiber optic and coaxial cable also includes a service component. Thus the sales are mixed transactions, including both a sale of tangible personal property and the provision of a service. Taken as a whole, the Subject Transactions are more analogous to a service.

Colorado does not tax services except for those specifically listed in state statutes.⁸ The Subject Transactions are not explicitly taxed and are, therefore, excluded.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts, and that all representations are true and complete, and Company has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Company's facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

⁴ Section 39-26-104(1), C.R.S.

⁵ 1 CCR 201-5, Special Rule 40.

⁶ *Waste Mgmt. of Colo., Inc. v. City of Commerce City*, 250 P.3d 722, 727–28 (Colo. App. 2010).

⁷ *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361, 366 (Colo. 2003).

⁸ *A.D. Store, Inc. v. Dep't of Revenue*, 19 P.3d 680, 683 (Colo. 2001).

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The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at www.colorado.gov/tax for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue

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