



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 20-004

December 2, 2020

XXXXX
Attn: XXXXX
XXXXX
XXXXX
XXXXX

Re: Private Letter Ruling

Dear XXXXX,

You submitted a request for a private letter ruling on behalf of XXXXX (“Company”) regarding the taxability of telephones for the hearing impaired, 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

Does the transfer of title of telephones for the hearing impaired, whether manufactured or purchased by the company, qualify as an exempt sale of “durable medical equipment” under section 39-26-717, C.R.S.?

Conclusion

The telephones provided by Company qualify as “durable medical equipment” under section 39-26-717, C.R.S., and are exempt from sales tax.

Background

Company is a service provider regulated by the Federal Communications Commission (“FCC”) that offers telecommunications services to the hearing impaired. Historically, the Company purchased specialized telephones for the hearing impaired from a third-party technology provider (“Prior Business Model”). The third-party technology provider shipped the telephones from its warehouse located outside of the state of Colorado to the Company’s warehouse that is also located outside of State. The Company then distributed the telephones to their sales representatives located across the US, including to representatives located in Colorado. The third-party technology company did not bill the Company for any out-of-state sales tax on the telephones. Once received, the Company’s representatives delivered and installed the telephones, at no cost, to Colorado customers.

Recently, the company changed its business model and began manufacturing its own technologies and telephones through a third-party located outside of the United States (“Current Business Model”). Under the Current Business Model, the company takes title to the telephone at its warehouses located out of the State and operates similarly to the Prior Business Model, by shipping telephones to representatives located in Colorado.

Under both models, the Company’s customers must obtain a written certification from their licensed health care provider, attesting to the customer’s medical condition and disability. The telephones are always used within the disabled customers’ home to provide a curative treatment for the medical purpose of enabling the hearing impaired to communicate through a telephone. Per FCC requirements, customers must obtain the health care provider documentation and certify that the hearing-impaired individual will be the sole user of the telephone. Titles to the telephones pass to customers upon installation by the Company’s sales representatives. The company does not charge customers for the telephones or for use of the telephones directly. Instead, the FCC sets a rate and reimburses the Company for the dialer minutes used by customers out of fees it collects through a fund that is specifically designed for the hearing impaired.

Discussion

The telephones provided by Company under either business model are exempt from sales tax because they meet the definition of “durable medical equipment.” Colorado imposes a sales tax on sales of tangible personal property at retail.¹ All sales of durable medical equipment dispensed in accordance with a prescription order by a practitioner are exempt from sales and use tax in Colorado.² Durable medical equipment is equipment, including repair and replacement parts, dispensed pursuant to a prescription, that can (1) withstand repeated use; (2) is primarily and customarily used to serve a medical purpose; (3) is not normally useful to a person in absence of an illness or injury, and (4) is not worn in or on the body.³ Durable medical equipment includes communication devices for the physically impaired, including speech aids for the impaired, and any related accessories.⁴

The telephones provided by Company meet the statutory definition of “durable medical equipment.” Only customers who have obtained a prescription from a practitioner can obtain the phones, and Company does not sell telephones to anyone who does not have a prescription. The telephones appear made to withstand repeated use, as they are designed to be used daily over several years. The telephones are designed to primarily and customarily serve the medical purpose of enabling phone conversations for the hearing impaired. Those without hearing loss would not likely have a use for these devices. As a result, telephones sold by Company are exempt from sales and use tax.

¹ Section 39-26-104(1)(a), C.R.S.

² Section 39-26-717(1)(a)(I) and (2)(j), C.R.S.

³ Section 39-26-717(1)(a)(I), C.R.S.

⁴ Section 39-26-717(1)(a)(II), C.R.S.; 1 CCR 201-4, Rule 39-26-717(1)(k)(iii)(D).

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

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 and home-rule counties. 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 tax.colorado.gov for more information about state and local sales taxes.

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.