

STATE OF COLORADO

DEPARTMENT OF REVENUE

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



Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

GIL-2009-018

March 17, 2009

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: taxability of services

Dear XXXXXXXXXXXXX,

This letter is in response to your request for a ruling whether certain products and services provided by your company ("Company") are subject to sales tax. The Department has promulgated a regulation governing the issuance of general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law and is not binding on the department. A private letter ruling is a determination of the applicability of tax to a specific set of circumstances and is binding in the department. A party requesting a private letter ruling must provide certain information and remit a fee. For more information about general information letters and private letter rulings, please review Department's regulation 24-35-103.5, C.R.S., which is available on our web site at: www.colorado.gov/revenue/tax.

Although you ask for a definitive ruling, your request does not contain the information required for a private letter ruling. I will initially treat your request as one for a general information letter. You may resubmit this request for a private letter ruling.

Issue

Are the products and services described below subject to Colorado sales tax?

Background

Your company provides a number of services:

XXXXXXXXXXXX ["Service A"] is a print and mail service that enables clients data file to be downloaded to a print shop. The company's print vendor receives the customer's data and letter forms, merge the data with the forms, print and mail the letters. The print vendor provides the paper and envelopes. The Company's invoice to clients separately states the charges for postage and services.

XXXXXXXXXX ["Service B"] is a service that automates movement of data files between client's system and the Company's data vendors. Data is transmitted by use of virtual private network or by the use of secure socket layer technology. There is no tangible material exchanged during this process.

XXXXXXXXXX ["Service C"] is an automated electronic process for providing address corrections to mailers provided by the US Postal Service. When USPS receives a mail piece that is undeliverable-as-addressed, an electronic notification is provide to update a client's record or database. There is no tangible material exchanged between the Company and client.

XXXXXXXXXX ["Service D"] is an automated data search enabled by an interface with the Company's vendor database that allows an exchange of corrected information so clients can electronically update their database. The search enables clients to update their database with information such as new address change, new phone numbers, and Social Security searches. There is no tangible material exchanged.

Discussion

Colorado levies sales tax on the sale of tangible personal property and only a limited number of services, none of which are relevant to the circumstances you have outlined above. §39-26-104, C.R.S. Although the Department does not have a regulation regarding electronic transmission of data, the Department has concluded in a related area that the electronic transmission of computer software is not tangible personal property. See, Special Regulation 7.

Although we do not decide here, it appears that most of the programs you offer are services that are not subject to sales or use tax. However, XXXXXXX [Service A] involves the sale of tangible personal property (paper forms and envelopes). Department Special Regulation 47 (Printers and Printing) describes the taxability of printed material and printing services. You can view this regulation as well as many other tax publications and resources on our web site at: www.TaxColorado.com.

We assume that the Company's contract with the print vendor is as a principal and not as an agent of the client. In such cases, the Company's tax obligation will depend on whether it is a reseller of the printed material to the client, or whether the Company is a provider of a service and the consumer of the printed material. If the Company is reselling the material to the client, then the Company must collect sales tax on the price paid by the client, including any charges for services not separately stated or for service that are inseparable even if separately stated. See, *AD Stores v. Department of Revenue*, 19 P3d 680 (Colo. 2001) (services that are separable from the sale of goods are not taxable).

If the "true object" of the transaction between the Company and client is the provisioning of a service, then the Company will be treated as the consumer of the printed material and is obligated to pay sales or use tax on that material, calculated on its acquisition cost for such

goods. See, Special Regulation Sales 52 (Service Enterprises) for a more complete discussion of when a transaction will be treated as a service or as a sale of property.

It is not appropriate in the context of a general information letter to provide a specific determination. These issues are often dependent of the facts of the specific case and a definitive determination can only be made in response to a request for a private letter ruling. You may resubmit your request as a request for a private letter ruling.

Finally, we note that you are located outside of Colorado. You may wish to review FYI Sales 5 (Sales Tax Information For Out-of-State Businesses).

Miscellaneous

Pursuant to state law and department regulation 24-35-103.5, the Department will make public a redacted version of this letter. Your letter requesting this general information letter is not made public. I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments, or objection concerning the redacted letter.

I hope this is helpful. As I noted earlier, general information letters provide only a general discussion of applicable law. You may request a private letter ruling which will provide a determination regarding the specific circumstances of your client. Please feel free to contact me if you have any questions.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue
Tele: (303)866-5627
Email: ntillquist@spike.dor.state.co.us