

STATE OF COLORADO



DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

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GIL-13-014

August 7, 2013

XXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Software License Renewal

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on software license renewals.

The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

Issue

Does sales tax apply to a license renewal to use prewritten, canned software when the original license was delivered through a tangible medium, but the renewal is delivered electronically with no additional transfer of tangible personal property?

Background

Company is a supplier of tax compliance software for the telecommunication and utility industries and is inquiring about the application of sales tax on the renewal of a license to

use prewritten, canned software when the original license was delivered via tangible means, such as a CD, but the renewal is delivered electronically with no additional transfer of tangible personal property.

Discussion

Computer software, as defined in §39-26-102(15)(c)(I), C.R.S., that is sold on or after July 1, 2012¹ is subject to Colorado sales or use tax if it meets the following criteria:

1. The software is pre-packaged for repeated sale or license;
2. The use of the software is governed by a tear-open non-negotiable license agreement; and
3. The software is delivered to the customer in a tangible medium. Software is not delivered to the customer in a tangible medium if it is provided through an application service provider, delivered by electronic software delivery, or transferred by load and leave software delivery.

The principal issue is whether the client's agreement to the license and the license itself must be on a tangible medium. Company obtains clients' agreement to the license by electronic means and presumably makes the license available for viewing by electronic means. Unlike the software itself, there is no requirement that the agreement to renew the license or the license be made in a tangible medium. We have concurrently ruled in PLR-13-003 that a nonnegotiable license that is presented electronically to a customer meets the statutory criteria of a "tear-open nonnegotiable" license even though the retailer offers the license online. PLR-13-003 states in pertinent part:

"Tear-open, nonnegotiable" license agreements are those most commonly found when a customer purchases a CD of a software program from a store. Once the plastic packaging is torn off the CD case, the buyer can find the license agreement, which is generally not negotiable. However, it is not essential that the buyer has to actually tear something open in order to meet

¹ The sale of standardized software that occurs between March 1, 2010 to June 30, 2012 is taxable. Such software is, for that time period, considered tangible personal property, regardless of how the standardized software is acquired by the purchaser or downloaded to the purchaser's computer.

"Standardized software" means:

1. Computer software, including prewritten upgrades that are not designated or developed to the specifications of a specific purchaser.
2. Computer software designed and developed to the specifications of a specific purchaser but then sold to another purchaser.
3. Software that is modified or enhanced even if such modification or enhancement is designed and developed to the specification of a purchaser.

Department FYI Tax Publication Sales 89, "Computer Software." This publication, as well as other tax publications are available on the Department's web site at www.colorado.gov/revenue/tax > Tax Library.

this criterion. For example, we believe this provision applies to licenses presented on the Internet when the buyer only has the option to click "I Agree" in order to purchase the software program.

In addition, the tangible personal property in question (i.e., computer software) is and remains tangible personal property under the statute. The license renewal agreement is merely a means by which the cost of the charge for the tangible personal property is measured. The purchase price, on which sales tax is calculated, is the total amount of money received in consideration for the purchase.² The subsequent renewal fee is simply a further charge for the continuing right to use what has already been established to be tangible personal property.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule 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 for more information about state and local sales taxes.

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

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue
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Email: neil.tillquist@state.co.us

² Department Regulation 39-26-102.7(a)(1) and (3) and 39-26-102.7(a)(1) and (3).