

STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-2007-19

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXXX
Attn: XXXXXXXXXX
XXXXXXXXXXXXXX.
XXXXXXXXXXXXXX

December 4, 2007

Re: Taxability of service contracts

Dear XXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated August 3, 2007 and November 15, 2006 re: taxability of service contracts. We apologize for the time it has taken to respond to your inquiry.

Issue

Are service contracts for rented tangible personal property taxable in Colorado?

Background

You state that your firm rents certain office equipment and, in connection with that rental, also purchased a service contract from the lessor/retailer. The lessor/retailer collects tax on both the rental of equipment and the service contract.

Discussion

1. Service contracts are taxable unless the service contract is separate from the rental contract.

Colorado levies sales tax on the sale and rental of tangible personal property. §39-26-104(1)(a) and §39-26-102(23), C.R.S. Services, in general, are not subject to sales or use tax. If a sale includes the both the rental of tangible personal property and servicing of the tangible personal property, then the entire consideration paid under the contract is taxable, unless the retailer obtains permission to apportion the taxable and non-taxable components of the sale. §39-26-105(2), C.R.S. If, however, the rental transaction and service agreement are two separate and distinct agreements, then the service agreement is not subject to tax. DOR Regulation (39-)26-105.2. The retailer must pay sales or use tax on property (e.g., parts) used to fulfill the service contract.

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

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