



COLORADO
Department of Revenue
Taxation Division

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GIL-2007-6

XXXXXXXXXXXXX
Attn: XXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

December 4, 2007

Re: gift card stock

Dear XXXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated May 29, 2007, re: taxability of bulk sales of gift card stock and tracking services. We apologize for the time it has taken to respond to your inquiry.

Issues

1. Is a retailer's purchase of bulk gift card stock (e.g., the physical plastic card) to re-sell to its customers subject to sales tax in Colorado or is it considered an exempt sale for resale?
2. Are tracking services bundled with the gift card subject to sales or use tax?

Background

There is no discussion in your letter explaining how gift cards are handled by the retailer. We will assume for purposes of this response that the following facts are typical of a retailer issuing gift cards. A customer gives the retailer a sum of money (e.g., \$25) and the retailer gives the customer a gift card which has an assigned value equal to what the customer paid. The purchaser then presents the card at the time of purchase and is given a credit toward the purchase up to the value assigned to the card. Although your question implies that these cards are "sold" to customers, we assume that there is not a separate or additional charge by the retailer to the customer for the card itself.

You state that the supplier of the gift card stock will bundle the sale of the cards with a service that tracks the retailer's customer's transactions.

Discussion

1. *A supplier's sale to a retailer of gift card stock is not an exempt sale for resale.*

A retailer must establish that the gift cards are resold to customers in order for the retailer to claim a "sale for resale" exemption on its purchases from the supplier. §39-26-102(9) and 104(1)(a), C.R.S. Based on the facts assumed above, the retailer is not reselling the gift cards to customers.

A retailer's gift card is functionally equivalent to a paper credit voucher issued by a retailer. The retailer does not charge the customer for the paper voucher or gift card itself; there is no exchange of title, possession or services at the time the voucher or gift card is issued to the customer; and the intrinsic value and purpose of the voucher or gift card is, at best, incidental to the transaction. *City of Boulder v. Leanin' Tree, Inc.* 72 P3d 361 (Colo. 2003) (transaction is non-taxable sale of a service or intangible even though it involves transfer of incidental tangible personal property). The gift card is more akin to a receipt for an intangible account payable, much like a contract or other paper document is merely evidence of an intangible property right. See, also, *Arizona Private Taxpayer Ruling No. LR99-010*; *Florida Tax Information Publication No. 06(A)01-21*. Therefore, under these assumptions, the sale of bulk gift cards to the retailer is not a sale for resale to the customer.

Because the gift card is not resold to the customer, the retailer is not entitled to a "sale for resale" exemption for its purchases of gift card stock from the supplier.

2. Bundled services purchased by a retailer from the supplier are not taxable if separable from the sale of gift cards and separately stated in the invoice.

Services are generally not subject to sales and use tax in Colorado. §39-26-104 and 202, C.R.S. However, as with any bundling of taxable and non-taxable items, the entire transaction is taxable unless the service is separable and the supplier separately states on the invoice or contract the price for the taxable card stock and the non-taxable tracking service. §39-26-102(12), C.R.S. ("[T]he sales price is the gross value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer."); §39-26-703(4), C.R.S. (taxpayer claiming exemption has burden of proof); *A.D. Store Co. v. Department of Revenue*, 19 P3d 680 (Colo. 2001) (services not taxable if separable from sale of tangible personal property).

It is difficult to determine whether the tracking service is separable based on the few facts provided in the letter. There is no description of who performs the service or how it is performed. For example, is the tracking performed by the supplier or is the tracking performed by the retailer using the retailer's point of service equipment and a PIN imbedded within the card? Is the service more aptly described as a license to use software? Moreover, it is not disclosed whether a retailer has the option to acquire the gift card stock without also acquiring the service. In any event, if the services are inseparable, then tax applies to the entire price, including the tracking service.

We must also consider whether the true object of the purchase of both the gift card and tracking service is a non-taxable service. See, e.g., *City of Boulder v. Leanin' Tree, supra*. Again, it is difficult to make an assessment on the little information set forth in the letter. We assume that even in the absence of a tracking service, the gift cards have value to the retailer, just as paper stock has value to a retailer. Therefore, in the absence of additional information, the true object of a retailer's acquisition of bundled gift card stock and a tracking service is not a service.

One final comment should be made. Even if the tracking service and gift card stock are separable and separately stated, the supplier cannot understate the price of the gift card stock and recover the difference in the price for the non-taxable tracking service.

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,

Office of Tax Policy
Colorado Department of Revenue