



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL-09-021

April 27, 2009

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Pet recovery services

Dear XXXXXXXXX,

You request guidance regarding the taxability of certain products and services provided by XXXXXXXXXXXXXXXXXXXXXXXX (the "Company"). The department issues general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law, does not provide a specific determination, 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 refer to the Department's regulation 24-35-103.5, C.R.S., which is available on our web site at: www.taxcolorado.org > FYI/Publications > Rulings.

We will initially treat your request as one for a general information letter. You may resubmit your request as a private letter ruling.

Issue

Are any of the following subject to sales or use tax: microchips, scanners, collar tags, fees for limited pet recovery services only, fees for full proactive pet recovery services only, microchips given away as free; lump sum fee for pet recovery service and microchip, and lump sum fee for microchip, implantation, and pet recovery service?

Background

The Company is in the business of providing lost pet recovery products and services. The Company sells microchips and associated scanners to veterinary practices, animal shelters, breeders, and pet stores. These microchips contain unique identifying numbers and are implanted under a pet's skin (referred to as a "chipped pet"). In the event that a chipped pet is lost, the pet can be scanned so that the information associated with the microchip can be used

to reunite the pet with its owner. In addition to the sale of the microchips and scanners, the Company provides the following services.

“Limited” XXXXX. The Company provides an internet accessible data repository in which owner and pet information is held for the purpose of reuniting lost pets with owners. Pet owners are asked to fill out an enrollment form, or have their veterinarian complete an enrollment form for them. Information on the form critical to the recovery of the pet is captured and uploaded to the Company’s database. The Company provides a pet recovery call center which receives calls from both individuals and institutions and uses information in the Company database to orchestrate the reuniting of the lost pet with its owner.

“Full” XXXXXX: The Company offers a premium pet recover service to pet owners who have had their pets chipped. Full Proactive Pet Recovery Services include all services available under the “Limited” plan plus the following additional services:

- Lost pet Alerts. Subscribers have the ability to log into the Company website to allow them to generate lost pet notices which are either faxed or emailed to veterinarians, shelters, and pet rescuers in the surrounding area in which the subscriber’s pet was lost. Subscribers also have the ability to create “Lost Pet” posters that can be printed and posted in the area via this service.
- 24/7 Emergency Medical Response through the ASPCA Animal Poison Control Center hotline.
- Complimentary Lost Pet Medical Insurance which provides for up to \$3,000 of emergency medical treatment for injuries a subscriber’s pet may suffer while lost.
- Provision of laminated, wallet-sized Pet ID Cards with the pet’s name, microchip number, photo, vet information and emergency clinic contact information.

Furthermore, in addition to the microchips and scanners and the services described above, the Company sells pet identification collar tags. These tags are used in conjunction with the Limited and Full XXXXXXXX Services. The tags are individualized with the pet’s microchip ID and the 1-800 Company call center number.

The Company’s sales practices are as follows:

- Chip Sales only. Microchips (packaged with single use syringes) are sold to veterinary clinics, shelters, and breeders.
- Vet Reseller Model. A variety of incentive programs are marketed to veterinary clinics which allow them to obtain chips for free. In a typical transaction, a microchip is provided for free to the clinic for each Full XXXXXXXX Service enrollment that the Company receives from the participating clinic. Clinics will charge an all-inclusive fee to the consumers for the chip, the implant procedure charge and the first year of pet recovery services. Clinics can also earn a free chip for enrolling a pet in the Company that they did not implant (i.e., a competitively chipped pet).
- Prepaid Program. Both vets and shelters are offered an optional “prepaid” plan wherein the microchip and first year of Full XXXXXXXXXXXXXXXXXXXX Services are offered for sale

from the Company. Shelters typically pass this charge along to customers as part of the overall set of pet adoption fees.

- The Company Pet Recovery Services. Pet recover services are offered directly to consumers for both the Company and competitively chipped pets. Limited pet recovery services are offered at a single fee for the life of the pet. Full XXXXXX XXXXX Services are offered for an annual renewable fee. Consumers are provided with an online consumer portal for registering for either Limited or Full service.

Discussion.

Colorado imposes sales and use tax on the sale, use, storage, or consumption of tangible personal property. §§39-26-104 and 202, C.R.S. In general, services are not subject to sales tax. The microchips, tags, and scanners are tangible personal property and the sale, use, storage, or consumption of these goods is subject to tax. Although there are a number of exemptions from sales and use tax, including drugs for certain livestock (which does not include pet animals), there are no exemptions that appear to apply to the circumstances you have outlined. §§39-26-716 and 102(5.5), C.R.S.

When taxable goods are sold as a bundle with non-taxable services, tax is computed using only the price for the taxable goods if the services are separable from the sale of goods and the price of the goods are separately stated on the invoice. *A.D Stores v Department of Revenue*, 19 P3d 680 (Colo. 2001) (services that are separable from the sales of goods are not taxable). For example, the price a retailer charges for made-to-order goods will generally include the cost of fabrication services as well as the cost of raw materials. The fabrication services are not separable from the sale of the fabricated goods and, therefore, the services are taxable. On the other hand, the sale of a dress that is ready to wear is separable from a charge for alteration services that a customer may order and the alteration charge is not included in the sales tax calculation.

Finally, even if the services are separable from the sale of goods, sales tax will include the charge for services if the retailer does not separately state the price for the goods on the invoice.

In some cases, a transaction may be considered solely the sale of non-taxable services, even though the transaction involves the transfer of tangible personal property. An example of such a transaction is an accountant providing accounting services and, as part of that service, the accountant provides paper documents to the client. The paper documents, although tangible personal property, are not the true object of the transaction between the accountant and client. Therefore, the entire fee charged by the accountant is not subject to sales tax even though it includes the cost of the documents. See, Department Special Regulation 52 (Service Enterprises); and *City of Boulder v. Leanin' Tree*, 72 P3d361 (Colo. 2003). Although this "true object" test is easily stated in the abstract, it is often difficult to apply to particular circumstances. In cases where there is ambiguity about the application of this test, the department will generally view such mixed transactions as a combination of a sale of services and sale of goods, as opposed to treating the entire transaction as a service contract.

Free samples provided by a retailer to prospective customers are not subject to sales tax. The retailer is considered the consumer of the samples and the retailer must pay use tax on the samples. However, when a retailer provides customers with "free" goods only when the customer performs some act required by the retailer, then the retailer has sold the goods. This

is a sale because a sale is defined as the exchange of goods for any valuable consideration, which is not limited to money. §39-26-102(5) and (7), C.R.S.; Department Regulation (39)26-102.7(a). The price on which sales tax is calculated is the fair market value of the microchip.

Finally, we note that you sell goods to animal shelters. Some animal shelters may qualify as charitable organizations. §39-26-102(2.5) (charitable organizations include those that are established for the prevention of cruelty to animals). Purchases by charitable organizations are not subject to sales tax. See Department FYI Sales 1 to learn more about sales to tax-exempt organizations. This publication as well as a host of other resources is available on the department's website at www.taxcolorado.org > FYI/Publications.

As noted earlier, you can submit your request as a private letter ruling if you would like a specific determination regarding the circumstances set forth above.

Miscellaneous

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

Sincerely,

Office of Tax Policy
Colorado Department of Revenue