



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL-12-006

April 4, 2012

XXXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Re: Application Service Providers

Dear XXXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXX ("Company") a request for guidance on the application of sales and use tax on application service providers.

The 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.taxcolorado.org > 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

Is product provided by Application Service Providers subject to Colorado sales and use tax?

Background

Company uses an Application Service Provider ("ASP") who provides the sales tax rate for each product Company sells. Company sends their sales information electronically to ASP who then electronically sends the tax rate back to Company. The question at issue is whether Colorado sales and use tax is due on the product provided from ASP.

Discussion

Colorado levies sales tax on the sale of tangible personal property and use tax on the use, storage or consumption of tangible personal property. 5539-26-104 and 204, C.R.S. With certain exceptions, Colorado does not levy sales or use tax on the provision of services.

The primary issue raised in your letter is whether the "use" of the software creates a sale or rental of tangible personal property (of computer software and/or host servers) or whether the transaction is more properly characterized as the sale of a service. Effective July 1, 2012, the definition of tangible personal property includes computer software that is prepackaged for repeated sale, governed by a tear-open non-negotiable license, and is delivered to the consumer in a tangible medium. Computer software that is used by a consumer via an ASP is not taxable computer software because the software is not considered delivered to the consumer in a tangible medium. 539-26-102(15).

An ASP is defined as, an entity that retains custody over (or "hosts") software for use by third parties. Users of the software hosted by an ASP typically will access the software via the Internet. The ASP may or may not own or license the software, but generally will own and maintain hardware and networking equipment required for the user to access the software. The ASP may charge the user a license fee for the software (in instances where the ASP owns the software) and/or a fee for maintaining the software/hardware used by its customer.

§ 39-26-102(15)(c)(II)(a)

As noted above, the department does not make a determination in this general information letter that the geo-information service described in your letter is an ASP or whether the product is subject to sales and use tax. You can obtain a determination of the taxability of the specific product by submitting to the Department a request for private letter ruling.

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.revenue.state.co.us 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,

Office of Tax Policy
Colorado Department of Revenue