



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL-15-025

December 15, 2015

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Re: Digital Photographs

Dear XXXXXXXXXXX,

You (“Taxpayer”) submitted a request for guidance to determine whether digital photographs are subject to sales or use ax.

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 but 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 treats this request as one for a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, the retailer can submit a request and fee in compliance with Department Regulation 24-35-103.5.

Issue

Is the sale of a digital photograph subject to sales tax?

Background

Taxpayer is a photographer and delivers photographs digitally.

Discussion

Colorado imposes sales tax on the sale of tangible personal property but not services, unless the services are rendered in the creation of custom made goods or goods made to order. § 39-26-102(12) and 104(1), C.R.S. Department Regulation 1 CCR 201-5, SR 40 sets forth guidance on the application of sales tax to photographers and the sale of their services and products.

Specifically, a photographer must collect sales tax on the sale of photographs to customers. In some cases, a photographer transfers to customers photographs on photographic paper or as celluloid negatives. More recently, however, digital technology allows photographers to create digital photographs that are transferred to the customer either on compact disc, digital video disc or, as in the case described here, electronically over the Internet.

The principal issue raised in this request is whether the transfer of photographs electronically constitutes a sale of tangible personal property. It is worth noting that if the digital photographs are transferred on CD, DVD or flash drive, there would be no question that the sale is subject to tax. We do not believe that transferring the photographs electronically renders the photographs intangible.¹ Tangible personal property is corporeal in nature – that is, it is part of the physical world. Conversely, intangible property is merely a concept, idea, or legal right, such as a copyright. The Department has traditionally viewed digital goods, such as digital music, movies, books, and photographs, as tangible personal property because they are not merely a concept or idea, but, rather, are part of the physical world. Therefore, digital photographs sold by a photographer are subject to sales tax.

There are various ways photographers charge for their work. When a photographer sells both a sitting fee and photographs, the sitting fee, if separately stated and if the photographer charges an additional fee to transfer the photographs to the customer, is not subject to tax. If, however, the customer pays the entire amount for the sitting fee and transfer of photos prior to the service / product being provided, it is more difficult to determine whether a service or product is being sold. Such a determination will depend on the facts and circumstances of the transaction.

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/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,

Office of Tax Policy
Colorado Department of Revenue

¹ Computer software delivered electronically has been legislatively declared intangible. § 39-26-102(15), C.R.S. (tangible personal property does not include electronically delivered computer software). Digital photographs are not computer software and, therefore, their sale is not governed by § 39-26-102(15), C.R.S.