



COLORADO
Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

GIL-16-002

January 12, 2016

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Annual Software Updates and Maintenance Agreements

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance to determine whether annual software updates and software maintenance agreements that cover software that was delivered electronically is subject to sales tax.

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

1. Are current annual fees for software updates delivered electronically and current annual maintenance agreement fees that apply to software purchased prior to July 1, 2012 subject to Colorado sales or use tax?
2. Are current annual fees for a maintenance agreement that apply to software purchased on or after to July 1, 2012 subject to Colorado sales or use tax?
- 3.

Background

Prior to July 1, 2012, Colorado law taxed computer software delivered electronically to customers. This law was amended effective July 1, 2012 and provided that computer software was not tangible personal property (and, therefore, not subject to sales or use tax) if it was

delivered electronically.¹ Company purchased computer software before and after July 1, 2012. Company also purchased computer software updates and maintenance contracts after July 1, 2012 for computer software purchased prior to July 1, 2012.

Discussion

Computer software updates and maintenance agreements purchased after July 1, 2012 that are delivered electronically are not subject to sales tax because they are not tangible personal property, even if the update or maintenance is for computer software that was treated as tangible personal property when purchased.²

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 § 39-26-102(15)(c), C.R.S.

² See, Colorado Department of Revenue Private Letter Ruling PLR-13-003. https://www.colorado.gov/pacific/sites/default/files/Computer%20Software%20and%20Maintenance%20Contracts%20Private%20Letter%20Ruling%20PLR%2013-003_1.pdf