



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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DOR_TaxPolicy@state.co.us

GIL-16-003

April 18, 2016

XXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX

Re: Maintenance Agreement

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXX (“Company”) a request for guidance to determine whether Company’s maintenance agreements are subject to 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.

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, Company can submit a request and fee in compliance with Department Rule 24-35-103.5.

Issue

Is Company’s “per click” charge subject to tax?

Background

Company leases or sells digital copiers to customers who use these machines to produce and sell items, such as business cards, posters, flyers, and books. When a customer purchases a copier, it also purchases a maintenance contract. The maintenance contract includes the labor to maintain printers in working order, replacement parts, and consumables, such as toner and staples. The sale of these consumables is considered wholesale sale transactions because these consumables are resold and the subsequent sale is subject to tax. The price for the maintenance agreement is based on the number of pages printed (a “per click charge”).

Structure of Analysis

To determine whether Company’s maintenance contract is subject to tax, the Department will examine the following questions:

1. Is the item a nontaxable service?
2. Is the item taxable under § 39-26-104(1), C.R.S.?

- a. Is the item tangible personal property sold or purchased at retail?
 - b. If the item is not purely tangible personal property, does the item contain both potentially taxable and nontaxable elements?
 - i. If it contains both potentially taxable and nontaxable elements, are the nontaxable service components and taxable tangible personal property separable and separated?
 - ii. What is the true object of the customer in the transaction?
3. Is the tangible personal property eligible for any exemptions?
- a. Is the item exempt as a sale for resale under § 39-26-102(19), C.R.S.?
 - b. Is the item exempt as a sale for resale or as an ingredient or component part of a product that is compounded under § 39-26-102(20), C.R.S.?

Discussion

Colorado levies sales and use tax on the sale, storage, use or consumption of tangible personal property in Colorado.¹ The sale of services are generally not subject to tax.

Company characterizes its “per click” fee as a charge for service (maintenance). We do not agree that the “per click” charge is strictly a service contract. Had the printing company purchased toner and staples separate from the maintenance contract, these items would clearly be subject to tax (unless, as described below, an exemption applies). Toner and staples, together with the paper on which copies are made, are not used for maintaining or servicing worn or broken parts of the printer. The “per click” fee represents both the sale of tangible personal property (toner and staples) and the provisioning of services (maintenance).

When a transaction involves both the sale of tangible personal property and the sale of a nontaxable service, we typically inquire as to whether these two items are separable, separately stated, and, if necessary, determine the true object of the transaction. However, we find that such an analysis is not required here because the sale of the toner and staples are exempt from tax under the facts described by Company. There are two exemptions that apply to the sale of toner and staples. The first exemption is the sale for resale (i.e., wholesale sale) exemption. Sales tax applies to retail sales, not wholesale sales.² Company represents that its customers are in the business of producing copies, posters and other items for sale and such items are subject to sales tax. Thus, the sale of toner and staples to these customers is exempt because the customers will resell these items.

The second exemption applicable here is the exemption for components or ingredients used to produce tangible personal property that is sold.³ The sale of toner and staples by Company falls within this exemption because the staples and toner are components or ingredients used in the production of tangible personal property (e.g., copies, posters) that is resold by the printing company to the end user.

For these reasons, we believe the “per click” fee is not subject to tax. The sale of toner and staples is exempt pursuant to two exemptions. The sale of the maintenance service is also not subject to tax because services are nontaxable and we assume the “per click” fee is optional and separately stated. Company is liable for use tax for any tangible personal property it uses in connection with the maintenance (e.g., lubricants, replacement parts). If Company assesses the

¹ § 39-26-104(1) and 202, C.R.S.

² § 39-26-104(1) and § 39-26-102(19), C.R.S.

³ § 39-26-102(20), C.R.S. Code of Colorado Regulations 1 CCR 201-5, SR-14 - Fabricating, Producing, and Processing. If the printer is owned by a company that uses it for its own internal needs, then the printing company’s purchase of the ink and staples are taxable because the printing company is the end user of those items.

“per click” fee to businesses that do not resell tangible personal property (i.e., copies, etc.), we will likely reach a different conclusion.

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