



COLORADO

Department of Revenue

Taxation Division

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

DOR_TaxPolicy@state.co.us

PLR 18-008

December 20, 2018

XXXXXX
Attn: XXXXXX
XXXXXX
XXXXXX

Re: PLR / Enterprise Resource Planning Software Maintenance Contract

Dear XXXXXX,

You submitted a request for a private letter ruling on behalf of your client XXXXXX ("Company") to the Colorado Department of Revenue ("Department") pursuant to Department Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in Department Rule 1 CCR 201-1, 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

Is Company's charge for computer program maintenance and support services, including charges for tax, legal, and regulatory updates ("Updates"), subject to sales or use tax?

Conclusion

Company's charge for computer program maintenance, including charges for Updates, is not subject to sales or use tax.

Background¹

Company works with businesses ("Client") that license enterprise resource planning ("ERP") software from other vendors, but decide to forego the additional maintenance and support services beyond the initial vendor maintenance and support period. ERP software contains modules, such as manufacturing management, financial management, supply chain management, human resource management, and customer relations management.

Company's enterprise support service represents 99 percent of its total revenue. As part of this service, Company provides Updates to Clients. Company provides the Updates by accessing Client's development environment remotely and making changes or advising the Client how to do the same. Updates can include modification to the functionality of the ERP or new data (e.g., tax rates). The Updates are designed to help ensure that Client is current with the latest legislative, regulatory, and other legal changes that impact the ERP

¹ Company provided a detailed description of its business activity which is only summarized in the Background.

system it is using. Updates are delivered electronically. Company's services include telephonic support and on-boarding services. These services are bundled by Company and invoiced with a single non-itemized fee.

Company provides Client with a XXXXXXXX ("XXX") as the main point of contact between Client and Company. Initially as part of the on-boarding process, the XXX determines which functional upgrades are available under Client's existing maintenance and support contract and then assist Client with downloading the desired upgrades from the ERP vendor. The XXX then provides ongoing support to Client and provides solutions to issues Client is having, such as a report not running or trouble running a process.

The remaining one percent of Company's revenue is generated from other services (e.g., global security services, account management services, strategic roadmap services, certain solutions, etc.).

Discussion

Company is not selling taxable computer software. Moreover, even if there is some tangible personal property conveyed in the provisioning of its computer maintenance services, the property is *de minimis* and the true object of the agreement is the provisioning of a service. Therefore, Company's charges for its computer program maintenance and support services, including charges for its Updates, are not subject to sales or use taxes.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts and that all representations are true and complete. The Department reserves the right, among others, to independently evaluate Company's representations and assumptions. The ruling is null and void if any such assumption and representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

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

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.