



COLORADO
Department of Revenue
Taxation Division
Office of Tax Policy Analysis
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PLR 21-005

July 21, 2021

XXXXXXXXXX
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Re: Applicability of Colorado sales and use tax to online education platform

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX (the “Company”) regarding Colorado sales tax, to the Colorado Department of Revenue (“Department”) pursuant to 1 CCR 201-1, 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 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Does Colorado sales tax apply to the Company’s online learning platform?
2. Is Company’s revenue from internet advertising services subject to Colorado sales tax?

Conclusions

1. Each learning plan product described (A, B, C, D, E, and F) is subject to Colorado sales tax.
2. The revenue derived from internet advertising services is not subject to Colorado sales tax.

Background¹

The Company operates an online learning platform (“the Platform”). The Platform provides virtual learning plans aimed at serving the education needs of participating students.

The on-demand digital courses are streaming video lessons which teach academic subjects, professional topics, and vocational licensure preparation courses. Each digital course is accompanied by a written transcript of the audio of the video. The digital courses are generally

¹ This section generally recites the statements of fact set forth in the request as required by paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5. The recitation of particular facts in this section is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be omitted as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

copyright-protected articles of property. All learning plans are subject to acceptance of the Company's terms of service, which applies to access to all content on the Platform.

Students may access the Platform and digital courses from their PC web-browser or via the student's mobile device. Students who access the Platform from their mobile device must first download the Company's mobile app to their device. Permanent possession of mobile-version file downloads is not possible.

Each subscription plan includes access to what the Company describes as online "tutors." A student exercises a tutoring request by asking an academic question in natural language, on the Platform. The student will have access to a tutor's answer to the question through the Platform. In addition, the Platform provides an automated list of similar questions for the student's consideration. The Platform's similar questions list has an automated answer with links—when such materials are available—to a brief video lesson and include interactive questions to help the student practice the lesson. Each learning plan product offers a set number of tutoring question-and-answer interactions per subscription period.

Parents can subscribe to a free parent account which enables the parent to link to their child's learning plan product to monitor their child's progress and receive regular email updates.

Learning Plans:

Product A, College-Courses for Credit, with Assessments, Online Tutors and Online Advisors: Product A is intended for college and college-bound students. The digital courses for Product A include interactive chapter quizzes which assess the student's understanding of the instruction provided. Product A includes two online, proctored exams per month for the Platform's courses which are recommended for transferable credit. The student's grades for courses recommended for transferable credit are based on a combination of graded homework assignments, quizzes, plus a proctored final exam. The student must answer at least 70% of the course questions correctly to achieve a passing grade. The homework assignments are graded by online tutors who interact with the student to explain their grading, and the student receives advice from online guidance counselors who advise the student with choosing a college and choosing the student's course selections on the Platform. Product A includes up to ten question-and-answer interactions with a tutor per subscription period. The Company retains copies of student's learning transcripts indefinitely, which the student can arrange to have submitted to a learning institution. The learning institution may grant course credit to the student at its own discretion.

Product B, College-Courses for Credit, with Assessments, Online Tutors and Online Advisors (Sponsored Students): Product B is a program ("the Program") offered by the Company to enterprises and other organizations who sponsor their employee ("Sponsored Student") to earn a college degree from a partnering college. The Sponsored Student receives access to the features of the Platform described in Product A, and under the guidance of an assigned live advisor, commences the course of study designated for the partnering college to ultimately achieve a college degree. Product B includes up to ten question-and-answer interactions with a tutor per month. The Company also offers the Program to municipalities, who sponsor municipal employees, and philanthropic organizations, who sponsor individuals in their pursuit of a college degree.

Product C, Courses with Assessments and Access to Online Tutor: Product C provides access to the digital courses which include interactive chapter quizzes to assess the Student's understanding of the instruction provided. Product C enables the student to enroll in the courses and thereby earn a certificate of completion for each course the student passes with a grade of 60% or better on the course quizzes. Students can retake the quizzes multiple times until successfully passing the course. Product C provides a dashboard which shows all the courses passed and failed, from which the student can download a copy of a certificate of completion earned. The Platform retains a permanent record of the student's certificates of completion, which a student can request at any time. Product C also allows the student to download a pdf copy of the quiz questions and a transcript for any course in which the student is enrolled. Product C includes up to ten question-and-answer interactions with a tutor per month.

Product D, The Teacher Plan: The Company offers a teacher plan, which contains all the features of Product C, plus additional capabilities which enable teachers to integrate the Platform's digital courses into their curriculum. Teachers can provide their students access to digital courses at no additional charge; and can remotely assign courses and lessons, as well as display the courses in their classroom. The teacher can, if desired, customize the digital lessons by inserting slides with the teacher's own text material into the digital lessons. The teacher also receives additional web-based resources such as lesson plans, automated-grading of the student's quizzes, student-progress tracking, and access to group-learning activities for their classroom. Additionally, the teacher plan allows the teacher to enroll in any class offered by the Platform, which offers courses to help teachers pass and maintain their professional certifications. The teacher plan provides access to online instructors, for which the teacher receives up to ten instructor-access questions per month. Learning institutions may purchase teacher-plans on behalf of the institution's teachers, or the Teacher Plan may be purchased by a teacher as an individual.

Product E, Courses with Access to Online Tutor: Product E provides access to the Platform's learning courses. Product E does not include quizzes, and as such, the student is not assessed on having passed a course. Product E includes up to five question-and-answer interactions with a tutor per month.

Product F, Tutor Access Plan: The tutor access plan provides up to five question-and-answer interactions with a tutor per subscription period. The tutor access plan does not provide access to the entire digital course library, but does provide access to brief video lessons and interactive questions to help the student. Additional tutor question-and-answer interactions are available for purchase if the Student requires additional tutoring interactions.

Internet Advertising Revenue:

The Company earns revenue from internet advertising under two revenue models:

The Company earns revenue under a pay-per-click model by creating web content for an advertising campaign for which the advertiser is a learning institution ("Advertiser"). The Company does not obtain the information the person submits at the Advertiser's website.

The Company also earns internet advertising revenue by fulfilling insertion orders on behalf of predominately not-for-profit universities, for which the Company is paid up to a certain number of redirected, qualified clicks.

Discussion

Learning Plan Products

The Company's learning plan products are subject to state and state-administered local sales tax. Colorado levies a sales tax on sales of tangible personal property.² Colorado does not tax services except for certain enumerated services.³ The classification of a transaction as a sale of tangible personal property, or a sale of a service, is based upon the transaction's true object.⁴ The true object test looks to the totality of the circumstances in order to characterize transactions involving the provision of both tangible personal property and intangible property or services.⁵ Specifically, the test attempts to "identify characteristics of the transaction at issue that make it either more analogous to what is reasonably and commonly understood to be a sale of goods, or more analogous to what is generally understood to be the purchase of a service or intangible right."⁶ "The method of delivery does not impact the taxability of a sale of tangible personal property. Examples of methods used to deliver tangible personal property under current technology include, but are not limited to, the following: compact disc, electronic download, and internet streaming."⁷

Each learning plan product is a mixed transaction that is more analogous to the sale of tangible personal property. The user gains access to the study modules as finished products. Each product includes streaming video lessons and written transcripts of each lesson. While the subscription plans also provide services, they exist to support the customer's use of the Platform and to direct users to existing videos and lessons. Access to guidance counselors and advisors is intended to help users select courses offered on the Platform. What makes the Platform subscription valuable is access to the preproduced videos and accompanying transcripts. When viewed as a whole, the learning plan products are more analogous to tangible personal property.

Internet Advertising Revenue

The Company's internet advertising revenue from the pay-per-click model and the fulfilling of insertion orders is not subject to state and state-administered local sales tax in Colorado. Advertising services, like most services in Colorado, are generally not subject to sales or use tax.⁸ The exception to this general rule is not applicable here.⁹

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts, that all representations are true and complete, and that Company has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to

² Section 39-26-104(1), C.R.S.

³ *A.D. Store, Inc. v. Dep't of Revenue*, 19 P.3d 680, 683 (Colo. 2001).

⁴ 1 CCR 201-5, Special Rule 40.

⁵ *Waste Mgmt. of Colo., Inc. v. City of Commerce City*, 250 P.3d 722, 727-28 (Colo. App. 2010).

⁶ *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361, 366 (Colo. 2003).

⁷ 1 CCR 201-4, Rule 39-26-102(15)(4).

⁸ 1 CCR 201-5, Special Rule 1.

⁹ 1 CCR 201-5, Special Rule 1(2) (sales tax license required when an advertising agency acquires articles for resale to its clients).

independently evaluate Company's facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at www.colorado.gov/tax for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue

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