



COLORADO
Department of Revenue
Taxation Division

Office of Tax Policy
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PLR 22-005

July 22, 2022

XXXXXXXXXX
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Via Electronic Mail: XXXXXXXXXXXX

Re: Sales tax on the sale and redemption of platform credits

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX (the “Company”) 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.

Issue

Whether Company’s sales of Platform Credits, and subsequent redemption by Viewers, are subject to state and state-administered sales tax.

Conclusion

Company’s sales of Platform Credits are not subject to state and state-administered sales tax. The redemption of Platform Credits by Viewers, both with and without Third-Party Enhancements, are not subject to state and state-administered sales tax.

Background¹

Company enables people (“Viewers”) to watch streaming videos on Company’s Internet-based platform (“Platform”). Viewers may use the Platform by accessing Company’s website or by downloading Company’s app to the Viewer’s device for free. Viewers can view real-time streaming videos without registering with Company or paying to access or view the streaming

¹ Paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5 requires the request for a private letter ruling to include a statement of facts. This section generally recites the statement of facts provided in the request, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be omitted to ensure confidentiality 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.

videos. Viewers may also view the videos of certain third parties (“Streamers”) on demand for a limited period of time after they have aired live.²

Company obtains licenses for the videos from Streamers. Streamers often create videos of themselves performing various activities, including playing video games and cooking. Streamers may also watch TV shows or movies with Viewers. During these videos, Streamers may provide commentary on their activities to the Viewers.

While viewing real-time streaming videos, Viewers can submit typed comments using the Platform’s chat function. The chat function appears to Viewers as a chat box on the right side of the screen. These comments are viewable by the Streamer and other Viewers. Each Streamer has the ability to respond to the Viewers’ typed comments by speaking during the video or by submitting its own typed comments via the chat function. Streamers and Viewers may also enter a variety of emotes – i.e., small pictures – into the chat function. Emotes are usually static images; they are occasionally short, repetitive animations.

A separate feature offered by Company is XXXXXXXXXX (“Platform Credits”). During the live streaming of videos, Viewers may send Platform Credits to the Streamer. The primary reasons that Viewers send Platform Credits to Streamers are to show support for that Streamer and be more likely to be noticed and commended by the Streamer and other Viewers. It is important to note that Viewers that send Platform Credits to Streamers do not receive additional access to the Streamer’s videos. A Viewer may access the same videos regardless of how many Platform Credits it sends to the Streamer or even if it does not send any Platform Credits at all. Thus, when a Viewer send Platform Credits, it—in most instances—receives nothing of substance in return. Further, as described in more detail below, the only visual aspect associated with a Platform Credit is an image that may appear in the chat function that notifies the Streamer and other Viewers that the Viewer has sent Platform Credits.

In order to send Platform Credits for a Streamer, Viewers must first purchase the Platform Credits from Company. Viewers send Platform Credits to the Streamer using the Platform’s chat function. Upon sending the Platform Credits, Company deducts the amount sent from the Viewer’s account. The Platform informs the Streamer via his or her activity feed that he or she has received Platform Credits and the number of Platform Credits sent. The Streamer does not “receive” these Platform Credits or any dollar value conversion of the Platform Credits at that time. Rather, as part of its monthly payout from Company, the Streamer is rewarded in the amount of \$XXXX for each Platform Credit used in the chat. Company occasionally runs limited marketing campaigns wherein Streamers are rewarded with additional prizes for their communities meeting collective Platform Credit usage goals in the Streamers’ channels. However, these limited marketing campaigns are not part of the core product experience.

As noted above, each time a Viewer sends Platform Credits, the amount sent is displayed in the chat box. This amount is accompanied by a small, animated graphic. The amount of movement displayed is limited; the movements are only short, repeating loops. Viewers may choose from a variety of animated graphics. The color, size, shape, and animation vary depending on the amount of Platform Credits sent. Alternatively, the Viewer may select animated versions of

² Access to the videos on-demand may require registration with Company and a subscription to view the videos of the particular Streamer. Company is currently collecting and remitting Colorado sales tax on sales of subscriptions.

popular global emotes, or choose from custom emotes available for certain Streamers. The graphic is displayed to the Viewers in only the chat message in which the Platform Credits are sent; it cannot be displayed a second time without again sending Platform Credits. The graphic and message remain visible in the chat stream, until they are hidden by the natural flow of the chat. The graphic and message are still visible if a Viewer scrolls back to the earlier chat messages, unless the page is reloaded.

The Viewer may (but is not required to) also submit a message to accompany the Platform Credit amount and graphic. Like any other chat message, the message sent with Platform Credits and a graphic is visible by the Streamer and other Viewers. It is not necessary to buy Platform Credits to submit a message; a Viewer may submit a message in chat, even without sending Platform Credits. Other than the amount of Platform Credits and the graphic, the message looks otherwise identical to any other chat message. As noted above, chat messages can be submitted at any time for no charge.

A Viewer may opt to send Platform Credits anonymously.³ The Viewer cannot send a message or emote when sending Platform Credits anonymously.

At the Streamer's option, sending Platform Credits also gives the Viewer access to the Streamer's Subscriber-only chat, even if the Viewer is not a Subscriber. Subscriber-only chat is the same chat function typically available to all Viewers, but the Streamer is permitting only Subscribers to submit chat messages. There is no default time period for a non-subscribing Viewer that sent Platform Credits to continue sending chat messages on the Subscriber-only chat. The length of the time period is solely at the Streamer's option. As the Streamer and other Viewers are notified of a Viewer's Platform Credits via a chat message, they would not be aware of the Platform Credits sent unless the non-Subscriber Viewer were granted the time-limited ability to submit a chat message.

Upon reaching certain tiers of Platform Credits sent for a Streamer in total (for all streams of that Streamer combined, not limited to a single stream), the Viewer unlocks varying badges. Badges are small pictures. The Streamers can also replace the default badges with their own custom designs. The badges are located next to the Viewer's name in chat messages. The badges are available only in the channel of the Streamer to which the Viewer has sent the Platform Credits and cannot be used by the Viewer outside of the Platform. Badges thus identify the Viewer as a charitable person that supports the Streamer.

When a Streamer's Viewers send enough Platform Credits or give enough Streamer subscriptions to themselves or others within a short period of time, a XXXXXXXXXX ("Special Event") occurs. Depending on the amount of contributions by all Viewers, contributing Viewers will receive an emote to use in messages permanently in the Platform's chat function for any Streamer. A Viewer must send a certain amount of Platform Credits in order to qualify for the emote award. Special Event emotes are awarded depending on all Viewers' totals. Thus, an emote award is not attributed to any singular Viewer unless the Viewer met the Special Event reward total independently without additional Viewer contributions. In addition to badges, these emotes further identify the Viewer as a charitable person that sends Platform Credits to its

³ The message may also—solely at the Streamer's option—be overlaid on the video streaming feed.

favorite Streamers, in general, without singling out the Platform Credits sent to any particular Streamer.

Viewers may also redeem their Platform Credits for the ability to use XXXXXXXXXX (“Third-Party Enhancements”). Third-Party Enhancements are interactive overlays and panels, developed by third parties. Third-Party Enhancements allow Viewers to further interact with the Streamer via heat maps and real-time game data overlays to mini-games, music requests, and Viewer leaderboards. Leaderboards may illustrate which Viewers have sent the most Platform Credits or Subscriptions to the Streamer. Other examples of Third-Party Enhancements available to Viewers include:

- Playing certain sounds that will be heard by all other Viewers;
- Modifying the Streamer’s voice in real time;
- Interacting with the game the Streamer is playing; and
- Applying images to the live stream video.

Discussion

Company’s sales of Platform Credits are not subject to state and state-administered sales tax. Colorado levies a sales tax on sales of tangible personal property and certain enumerated services.⁴ The term “tangible personal property” embraces all goods, wares, merchandise, products, and commodities, and all tangible or corporeal things and substances that are dealt in and capable of being possessed and exchanged.⁵

Tangible personal property does not include intangible property constituting mere rights of action and having no intrinsic value, such as contracts.⁶ In this respect, the sale of gift certificates and gift cards, which evidence the issuer’s agreement to provide goods and services when redeemed, are not subject to Colorado sales tax when acquired.⁷ If, however, the gift card is redeemed to acquire taxable tangible personal property or services at retail in this state, the sale would be subject to sales tax.⁸

Although not denominated in dollars, the Platform Credits are akin to gift cards. Their purchase evidences the right of the Viewer to receive, and the agreement of Company to provide, benefits and rewards when the purchaser chooses to redeem the Platform Credits. Therefore, the sale and purchase of Platform Credits is not a sale of tangible personal property.

Furthermore, when the Viewer redeems the purchased Platform Credits, that transaction is also not subject to sales tax. The fact that Platform Credits are not denominated in dollars when they are redeemed is not dispositive to this question. The term “purchase price,” which is the basis for the state sales tax, broadly means “the price to the consumer.”⁹ The term encompasses all

⁴ Section 39-26-104(1), C.R.S.

⁵ Section 39-26-102(15)(a)(I), C.R.S.

⁶ 1 CCR 201-4, Rule 39-26-102(15), paragraph (2)(b).

⁷ 1 CCR 201-5, Special Rule 20.

⁸ *Id.* See also, 1 CCR 201-4 Rule 39-26-102(7)(a), paragraph (2) (explaining that the term “purchase price” includes the fair market value of property taken in exchange).

⁹ Section 39-26-102(7)(a), C.R.S.

forms of consideration, including the fair market value property taken in exchange.¹⁰ If the Viewer were to receive anything taxable in exchange for redeeming Platform Credits, that transaction would be subject to tax.

In this case, however, the Viewer's redemption of the Platform Credits is not subject to state sales tax because the credits are not being used to acquire taxable tangible personal property or services. In exchange for the Platform Credits, the Viewer is primarily receiving the service of having their chat message emphasized to the Streamer and other Viewers on the Platform. Ultimately, the Viewer may be purchasing the special recognition of earning certain badges. These services are not among those explicitly subject to state sales tax,¹¹ and therefore, the exchange of Platform Credits for these services is not taxable. Furthermore, to the extent the Platform Credits compensate the Streamer, their redemption is in the nature of a non-taxable gratuity.¹²

Finally, the Viewer's redemption of Platform Credits in exchange for Third-Party Enhancements is not subject to state sales tax. As described, some of the Third-Party Enhancements seem to be additional ways for the Viewer to have their message emphasized on the Platform. As we concluded above, these services are not subject to tax. In some cases, the Third-Party Enhancements could likely be described as computer programs or program upgrades. This distinction, however, is immaterial. Although Colorado taxes digital goods,¹³ computer software that is delivered to the purchaser electronically is explicitly excluded from taxation.¹⁴ Therefore, even when used to purchase Third-Party Enhancements, the Platform Credits are not being used to acquire taxable tangible personal property or services.

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 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 tax.colorado.gov for more information about state and local sales taxes.

¹⁰ 1 CCR 201-4 Rule 39-26-102(7)(a).

¹¹ See *A.D. Store Co., Inc. v. Dep't of Revenue*, 19 P.3d 680, 683 (Colo. 2001) (“[N]o service is taxable, except those services specifically listed in the statute itself.”).

¹² 1 CCR 201-1, Rule 39-26-104-6.

¹³ See section 39-26-102(15)(b.5), C.R.S. (defining “tangible personal property” to include digital goods).

¹⁴ See Section 39-26-102(15)(c), C.R.S.

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Thank you for your request.

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.