



# COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy  
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PLR 23-004

August 21, 2023

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Via Electronic Mail: XXXXXXXXXXX

Re: Travel Experience Packages

Dear XXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXX (“Company A”) and XXXXXXXXXXX (“Company B”), 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, and it applies to both parties.<sup>1</sup> 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 taxpayers to whom the ruling is made.

## Issues

1. Whether the Basic Travel Experience Package (“basic package”) is subject to sales or use tax in Colorado.
2. If the basic package is subject to sales or use tax in Colorado, whether Company A, as the company selling the Package, or Company B, as a service provider, would have the obligation of registering, collecting, and remitting applicable sales or use taxes in Colorado if interstate travel begins in Colorado and ends in another state.
3. Whether sales or use tax is due on the basic package if interstate travel begins in another state and ends in Colorado.
4. If sales tax is due on the basic package, which includes interstate travel, whether local sales or use taxes must be collected.
5. If sales tax is due on the basic package, which includes interstate travel, whether sales tax can be prorated based on train miles traveled in Colorado.

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<sup>1</sup> Paragraph (10)(d) of 1 CCR 201-1, Rule 24-35-103.5 states that “a taxpayer may not rely on a Ruling issued to another taxpayer, including a related party, unless such person is disclosed in the request and the department expressly agrees to apply the Ruling to such persons.”

## **Conclusions**

The basic package is not subject to sales tax in Colorado. Because the basic package is not subject to sales tax, the Department is not addressing the remaining issues.

## **Background<sup>2</sup>**

The company conducts business as a travel experience enterprise. The company's brand name conducts travel business through two legal entities: Company A and Company B. Company A and Company B are sister companies.

Company A is based outside of Colorado and is not registered in Colorado for sales and use tax. Company A creates and markets travel experience packages, bills customers for the travel packages/products/services offered, recognizes revenue and expenses for travel, and provides customer service. Company A does not actually provide the travel packages but rather contracts with Company B to provide the actual travel experience for customers.

Company B, headquartered in Colorado, provides operational support services to Company A, and executes the guest experiences set by Company A. Company B owns property, employs staff in Colorado, and contracts directly with hotels, food/beverage companies, and other third-party service providers. Company B provides all travel related services to customers.

Customers have no obligation to utilize any of the amenities offered but cannot opt-out of any basic package amenities in an effort to reduce the purchase price. Company B negotiates contracts with third-party companies to reserve specific blocks of rooms and acquires products and/or services at specific rates. Company B remits payment to the third-party companies and pays applicable sales, use, and hotel occupancy taxes calculated upon their negotiated rates.

### Basic Travel Experience Package

The basic travel experience package lasts two days and is an all-inclusive package offered as a bundle. The customer invoices are presented as one line charge. However, the customer's itinerary does break out their travel arrangements by day.

Basic packages are advertised online on the company's website. Company does not sell travel packages sold by other companies. Add-ons cannot be purchased without the purchase of a basic package. The basic package is booked as a lump-sum total including interstate travel, onboard meals, and overnight hotel stay in Colorado. Add-ons are separately stated from the basic package.

The basic package includes two days on board the train, with one night of accommodation in Colorado, and transfers to and from the train siding at the beginning and end points. Customers are provided with interstate travel to landmark destinations; guided, on-train sightseeing opportunities; historical knowledge; catered meals; and a hotel stay. Travel may begin or conclude in Colorado. The reciprocal

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<sup>2</sup> 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.

beginning or end of the trip will originate or terminate outside of Colorado. Currently, no travel package is offered that solely includes travel within Colorado.

During the trip, customers are served three designated meals and offered periodic non-alcoholic beverages, alcoholic beverages, and snacks. Company B purchases prepared meals and beverages from a third-party catering company and the meals and drinks are served by Company B waitstaff. The catering company makes delivery to Company B's Colorado origin station. Company pays applicable sales taxes charged by the catering company.

Company B bartenders and waitstaff serve alcoholic beverages to customers during the tour. Company B holds a liquor license with the State of Colorado. Alcoholic beverages are purchased from a third-party distributor located in Colorado. The distributor makes delivery to Company B's Colorado origin station. Company pays applicable sales taxes charged by the third-party distributor.

Customers are provided with overnight hotel accommodations at a designated midpoint hotel in Colorado. Midpoint hotels are preassigned roughly 30 days before travel, and guests cannot select which hotel they are staying at. Guests pay a flat fee for these hotels, and different hotels do not change the price for guests. Based on previously negotiated terms Company B separately pays the third-party hotel provider for the room reservations and any applicable taxes. Company B directly provides customers with their room keys. Customers can then enter the hotel and check into their rooms without having to provide additional information at the hotel front desk. Customers do not directly interact with the hotel staff regarding reservations or check-in.

Customers are also provided with necessary luxury bus transportation to and from the train station at the designated midpoint along the way at no additional charge.

#### Add-On Services for Travel Experience Packages<sup>3</sup>

Customers also have the option to choose from numerous upgraded travel packages that include additional products and services not offered with the basic package. Add-ons cannot be purchased without the purchase of a basic package. Add-on products and services are not separately stated on customer invoices. Rather, customers receive an updated package that separately identifies the customers' daily travel itineraries with updated pricing. However, add-on products and services would be separately identified on customers' itineraries. Company B tracks each of the add-on services separately on their books and records.

Add-on products and services that customers can choose from include upgraded food/beverage options, additional hotel accommodations, motorcoach transportation to and from airports, and guided tours. Applicable sales tax and other applicable taxes are charged by the third-party companies supplying products or services at the Colorado state tax rate.

### **Discussion**

Colorado imposes a sales tax on retail sales of tangible personal property.<sup>4</sup> The term "tangible personal property" means "corporeal personal property," and generally embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances that are

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<sup>3</sup> While the requester provided background information about the add-on services, the issues only address the basic package. Therefore, the Department is not expressing any opinion about the taxation of the add-on services.

<sup>4</sup> Section 39-26-104(1)(a), C.R.S.

dealt in and capable of being possessed and exchanged.<sup>5</sup> Colorado does not generally impose sales tax on services. Only those services specifically listed in the statute, including the entire amount charged for rooms or accommodations, are subject to tax.<sup>6</sup>

However, services that are otherwise excluded from the state sales tax may be taxable if they are provided as part of a mixed transaction that also includes the sale of tangible personal property or taxable services.<sup>7</sup> The first factor in the taxability of a mixed transaction is whether the taxable and nontaxable items are “separable” from each another. An item is “separable” from the rest of the mixed transaction when its nature remains the same whether it is contracted for as part of the mixed transaction or at a later time, and purchase at a later time is an option.<sup>8</sup>

If an otherwise nontaxable service is inseparable from the taxable items with which it is sold, then the taxability of the entire mixed transaction depends on the true object of the transaction from the purchaser’s perspective.<sup>9</sup> The true object test analyzes the totality of the circumstances to identify the characteristics of the transaction that make it more analogous to the sale of a taxable item or more analogous to the sale of a nontaxable item.<sup>10</sup> If the true object sought by the purchaser is a nontaxable item per se, then the transaction is not subject to tax even though some otherwise taxable items are included in the transaction.<sup>11</sup>

The basic package sold by Company A and provided by Company B combines multiple elements of taxable and nontaxable tangible personal property and services, including transportation by train and bus, tour guide services, food and drink, and hotel accommodations. Therefore, its sale is a mixed transaction.

As stated in the background section, the basic package is sold as an all-inclusive package offered as a bundle. Because Company A and Company B do not market or sell the elements of the basic package separately, purchase of the nontaxable elements at a later time is not an option. Therefore, the transaction is inseparably mixed, and the taxability of the entire transaction depends on the true object of the transaction.

Based on the information provided, the true object of the basic package is the two-day train travel experience. Customers are purchasing on-train sightseeing opportunities and historical knowledge provided by Company B during interstate travel to landmark destinations. The taxable elements of the basic package, such as the hotel accommodations, primarily meet the customer’s basic needs during the experience, and thus are not the true object of the transaction. The incidental nature of the accommodations is evidenced by the fact that the specific midpoint hotel is not selected by the customer and may not be selected by Company B until after the customer purchases the package. Because the true object of the basic package is a nontaxable service, the sale of the basic package is more analogous to the sale of a nontaxable service, and this inseparably mixed transaction is not subject to sales tax.

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<sup>5</sup> Section 39-26-102(15)(a)(I), C.R.S.; paragraph (1) of 1 CCR 201-4, Rule 39-26-102(15).

<sup>6</sup> *A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 19 P.3d 680, 683 (Colo. 2001); section 39-26-104(1), C.R.S.

<sup>7</sup> See 1 CCR 201-4, Rule 39-26-102(12); 1 CCR 201-4, Rule 39-26-102(7)(a); *A.D. Store*, 19 P.3d at 683-684.

<sup>8</sup> *A.D. Store*, 19 P.3d at 684; paragraph (1)(b) of 1 CCR 201-5, Special Rule 18.

<sup>9</sup> 1 CCR 201-5, Special Rule 40; *City of Boulder v. Leanin’ Tree, Inc.*, 72 P.3d 361, 363 (Colo. 2003); *Noble Energy v. Co Dept. of Revenue*, 232 P.3d 293, 297-98 (Colo. App. 2010).

<sup>10</sup> *Leanin’ Tree*, 72 P.3d at 365-366.

<sup>11</sup> 1 CCR 201-5, Special Rule 40; paragraph (5) of 1 CCR 201-4, Rule 39-26-102(15); *Leanin’ Tree*, 72 P.3d at 363.

### Miscellaneous

This ruling is premised on the assumption that Company A and Company B have completely and accurately disclosed all material facts, that all representations are true and complete, and that Company A and Company B have 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 A and Company B'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](http://Tax.Colorado.gov) for more information about state and local sales taxes.

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.**