



COLORADO
Department of Revenue

Taxation Division
Office of Tax Policy Analysis
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PLR 21-002

July 5, 2021

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Re: Applicability of Colorado sales and use tax to paid subscription program

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX (“Company”) to the Colorado Department of Revenue (“Department”) pursuant to 1 CCR 201-1, Reg. 24-35-103.5. The request sought a ruling regarding paid subscriptions for the Company’s upgraded benefit program. 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, Reg. 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Is Company’s sale of Paid Subscription Program to Colorado customers subject to sales tax?
2. Is Company’s provision of a free, one-month trial of Paid Subscription Program to Colorado customers subject to sales and use tax?

Conclusions

1. Company’s sale of Paid Subscription Program to Colorado customers is subject to Colorado state and state-administered local sales tax.
2. Company’s provision of a free, one-month trial of Paid Subscription Program to Colorado customers is not subject to Colorado state and state-administered local sales and use tax.

Background¹

Company offers a program known as XXXXXXXXXXXX (“Paid Subscription Program.”) Customers may sign up for a free one-month trial, or pay a fee, to access certain benefits associated with shopping on the Company’s website during the subscription period (thereby becoming

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 redacted as required by section 24-35-103.5(5), C.R.S.

“Participants” in the Paid Subscription Program). The free trial period is one month, and the paid subscription period can be monthly or yearly. The current suite of Paid Subscription Program benefits is outlined below:

- *Shipping* - Participants receive free expedited shipping and other discounted shipping benefits on eligible purchases. Products eligible for shipping benefits are designated as such on Company’s website product pages. Also, certain products sold by third-party merchants participating in the fulfillment program are eligible for the shipping benefits.
- *Videos* - Participants may view designated movies and television shows an unlimited number of times at no additional cost during the course of the Paid Subscription Program. The videos are viewed on the Participant’s television, computer, gaming system, or other compatible device. All Participants may stream the videos. Participants with certain Company devices may also download videos. If a Participant cancels the Paid Subscription Program, or the program expires after the video is downloaded, the Participant will lose access to the downloaded video. There are restrictions on how much time Participants are allowed to access downloaded videos without an Internet connection.
- *E-Books* - Participants who own certain Company devices may select and receive one electronic book per month from four books selected by publishing editors for no additional cost. The selected electronic book becomes a permanent part of the Participant’s library.
- *Heavy Item Purchase & Shipping* - Certain heavy or bulky items are available for purchase only by Participants, who can then have them delivered for a flat shipping fee up to a certain weight limit.
- *Branded Products* - Participants may purchase a line of branded products that are not available to other customers.
- *Discount Pricing* - The discount pricing program provides discounts to Participants when purchasing certain goods. For example, Participants may purchase certain televisions and software at a discount. The products offered to Participants at a discount continue to expand.
- *Early Access* - Participants receive early access to select sales events.
- *Music* - Participants may listen to an unlimited number of songs and albums at no additional cost. Music may be played on the Participants computer or other compatible device. Music may be streamed or may be downloaded for listening without a wireless connection. Similar to videos, if a Participant’s Paid Subscription Program lapses or expires, the Participant will lose access to the downloaded music.
- *Cloud Photo Storage* - Participants receive unlimited storage for and 5GB of storage for videos and files.
- *Audio Articles* – Participants may listen to audio editions of select articles from various news outlets and hand-selected playlists of comedy and lectures for no additional cost.

- *E-Book Library* – Participants may access and read a rotating selection of electronic books, magazines, or comics.
- *Gaming* – Participants may access a broadcast streaming platform. The platform allows video game players to broadcast streaming video of themselves playing video games and to interact with their viewers. Participants also receive discounts on game purchases, exclusive access to games and in-game content, and other perks.
- *Grocery Delivery and Discounts* – Participants may purchase groceries, everyday essentials, and selections from neighborhood shops. Participants also receive discounts on certain goods.

Although Company does not directly provide the Paid Subscription Program benefits to Participants, it is contractually obligated to ensure the benefits are provided. To meet its contractual obligations, Company pays its affiliates to provide an underlying service related to each benefit. For example, one affiliate of Company provides shipping and another affiliate provides e-books.

Discussion

1. *Company's sale of the Paid Subscription Program to Colorado customers is subject to sales tax.*

Company's sale of the Paid Subscription Program to Colorado customers is subject to Colorado state and state-administered local sales. Colorado imposes a sales tax on the price paid or charged on all sales and purchases of tangible personal property at retail.² Tangible personal property means corporeal personal property, which stands in contrast to incorporeal property. Tangible personal property embraces all goods, products, and commodities capable of being possessed and exchanged.³ The method of delivery, including delivery by electronic download or Internet streaming, does not impact the taxability of a sale of tangible personal property.⁴

When a customer purchases the Paid Subscription Program, the customer has immediate access to a variety of digital products, such as digital movies, digital music, and digital books. Thus, the purchase has all the elements of a taxable transaction: the purchaser receives tangible personal property in exchange for consideration paid to the retailer.

We do not find it persuasive that Company does not know at the time of sale whether or to what extent the customer will use any of the tangible personal property sold as part of the Paid Subscription Program. Likewise, the fact that a customer may not use the tangible personal property, or may minimally use the tangible personal property relative to the other elements of the program, does not affect our analysis. Whether a purchaser actually watches a movie or reads a book is irrelevant to whether a sale of that good has taken place.

Company's subscription fee is a bundled transaction, as the Participant receives services, tangible personal property and other benefits such as discounts. Each of the elements of this

² Section 39-26-104(1)(a), C.R.S.

³ Section 39-26-102(15); 1 CCR 201-4, Rule 39-26-102(15).

⁴ 1 CCR 201-4, Rule 39-26-102(15) (4).

bundle are separable from the others. Indeed, Company has sold certain parts of the Paid Subscription Program separately in the past. That a retailer elects to sell a package or bundle of property and services at a single price, rather than separately stating the prices for each item, does not operate to exclude or exempt the package from sales tax. “Colorado, as do most states, imposes tax on the entire price of a bundled transaction, unless the value of the taxable item is de minimis.”⁵ For these reasons, we conclude that the price for the entire Paid Subscription Program is subject to Colorado state and state-administered local sales.

2. Company’s provision of a free, one-month trial of the Paid Subscription Program to Colorado customers is not subject to Colorado state and state-administered local sales and use tax.

Company’s provision of a free, one-month trial of the Paid Subscription Program to Colorado customers is not subject to Colorado state and state-administered local sales and use tax. We conclude that these trial access periods are best viewed as discounts applied to the initial subscription period. Because Company is not reimbursed for the discount, the sales tax due is calculated on the discounted price for the first subscription period.⁶ In essence, the customer is purchasing a 13-month Paid Subscription Program for the price of a 12-month program.

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, and 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.

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.

⁵ PLR-10-001 (Feb. 16, 2010); see also PLR-12-006 (Dec. 12, 2012) (“In general, sales tax is calculated on the entire purchase price when a retailer bundles the sale of both taxable and non-taxable items for one price.”).

⁶ 1 CCR 201-5, Special Rule 11.