

# STATE OF COLORADO

DEPARTMENT OF REVENUE  
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GIL-2007-18

Bill Ritter, Jr.  
Governor

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Executive Director

XXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXX  
XXXXXXXXXXXXXX  
XXXXXXXXXXXXXX

December 4, 2007

Re: taxability of services

Dear XXXXXXXXXXXX,

This letter is in response to your undated letter to the Colorado Department of Revenue, we received on May 7, 2007, re: taxability of [Company] services. We apologize for the time it has taken to respond to your inquiry.

## Issue

Are the sourcing, recruiting and hiring activities of [Company] taxable by Colorado?

## Background

[Company] provides a customer located in [State] with a "Sourcer" who is located in [Country]. The Sourcer canvases the Internet, trade publications, and other sources for resumes that match job vacancies. The Sourcer provides the resumes to a project manager, who lives in Colorado. [Company] bills the [State] customer a flat monthly fee for work performed by the Sourcer. It is not clear from your letter whether the project manager works for the client or [Company].

You also provide the [State] customer with a "Recruiter" who is also located in [Country]. The Recruiter receives resumes from the Sourcer and contacts the potential candidates for job interviews and negotiation. Some of the interviews and negotiations are with people who are located in Colorado. The Recruiter then forwards to the project manager a small group of resumes. The [State] customer is billed a flat rate for work performed by the Recruiter.

The [State] customer then hires candidates from the list of resumes provided by the Sourcer and Recruiter. [Company] receives a flat fee for each person hired by the [State] customer. Some of the jobs for which the [State] customer hires are located in Colorado.

## Discussion

Colorado imposes a sales and use tax on the sale, use, storage or consumption of tangible personal property. With some exceptions not relevant here, Colorado does not levy a sales or use tax on services. §39-26-104(1)(a), C.R.S.

Based on the limited information provided in your letter, your sourcing and recruiting activities are services. Businesses engaged in recruiting activities are commonly understood to be offering a service. See, e.g., West

Virginia Administrative Division No. 94-282 U (out-of-state recruiters are providing a service); Ohio Tax Commissioner Opinion No. 93-0001 (employment placement is a service); *City of Boulder v. Leanin' Tree*, 72 P3d 361 (2003). The "product" you create is a customized collection of data gathered specifically for a client.

I note that tangible personal property is transferred from you to the client in the form of resumes. The transfer of tangible personal property is not taxable if the true object of a transaction is the provisioning of a service and the tangible personal property is incidental to the transaction. Department Special Regulation 52 (Service Enterprises); *City of Boulder v. Leanin' Tree*, supra. Because I conclude that the true object of the transaction is a service, the customized list of resumes is not subject to sales or use tax.

My conclusion here would likely be different if the list of resumes you provided were not created for a specific client but, rather, were provided to more than one client, such as on a subscription basis. In such cases, the list itself is the true object of the transaction and the transfer of that list in a tangible medium is taxable. Special Regulation 52; c.f., California Sales Tax Counsel Ruling No. 515.0002.650 (customized business directory a service).

Finally, I have addressed only the applicability of sales and use taxes to the transactions you describe. I do not understand you to request advice on the applicability of Colorado's corporate income tax to these transactions. Moreover, I would need to know whether the project manager works for [Company] or the client in order to begin to address such a question. Please let me know if I have misunderstood your request.

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

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