

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
(303) 866-3091
FAX (303) 866-2400



GIL-2008-2

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXX
Attn: XXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

January 8, 2008

Re: web hosting, computer software

Dear XXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated September 27, 2007, re: taxability of hosting and network connectivity fees.

Issue

Does sales or use tax apply to hosting and network connectivity fees?

Background

[Company] is an out-of-state vendor that provides "Back office" and "Point of Sale" software to customers located in North America. You state that [Company] either licenses this software to customers or provides "Software as a Service" (SaaS) in a hosted infrastructure located in [country]. SaaS is an agreement between [Company] and the customer by which the customer obtains access to [Company]'s hosted applications (Connected Retailer Solutions, which consists of Merchandising, Sales Audit, Customer Relations Management (CRM) and Point of Sales (POS) with an additional option for a Planning Module and Great Plains Dynamics software), and receive POS equipment support and maintenance services for the in-store solution.

Customers transmit data to [Company] from the in-store POS solution and the data is stored on [Company]'s servers. The customer's head office users connect to the hosted infrastructure via a Remote Desktop Software and have the right to export and save data, and print reports locally. Ownership of the material data for the SaaS solution remains with the customer.

[Company] charges customers:

A hosting fee, which means a charge for the right to use the Connected Retailer Software in the hosted environment and at the Point of Sale locations and obtain support services. The customer has no right of ownership of the software or any component thereof.

A Network Connectivity fee to those customers who opt to purchase the service. This is a high speed broadband connection established between the customer's store and/or head office locations to the [Company] hosting facility.

The hosting and connectivity fees are billed separately.

Discussion

Colorado levies sales and use tax on the sale of tangible personal property, and some services, including telecommunications services. In addition, software that is licensed can be taxable. See department Special Regulation 7. However, you requested advice only for SaaS services and not for licensed software. Please let me know if this is incorrect.

Internet access, e-mail services, web site hosting and domain name registration are not telecommunications services and, thus, are non-taxable services in Colorado. Department publication FYI Sales 79 and 80. Based on the very limited information you provided, it appears that neither the hosting fee or network connectivity fee are taxable.

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,

Steve Asbell
Taxpayer Service Division
Phone 303.866.3889
Email sasbell@spike.dor.state.co.us