

GIL-2008-25

September 17, 2008

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Re: XXXXXXXXXXXXXXXX Program

Dear XXXXXXXXXXXX,

This letter is in response to your letter, dated February 1, 2008 regarding the taxability of a variety of goods and services. I apologize that it has taken so long to reply to your request.

Colorado enacted legislation governing requests for tax advice and the department recently promulgated a regulation that sets forth the process for submitting requests. See, §24-35-103.5, C.R.S. and Department regulation (24)-35-103.5. Pursuant to this regulation, the department issues both private letter rulings and general information letters. Private letter rulings are issued in response to specific factual settings, are binding on the department, and require payment of a fee. General information letters are issued in response to general tax questions and are not binding on the department. You can view this regulation on-line at:

<http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html>

It is unclear whether you are asking for a private letter ruling or a general information letter. I will initially treat this as a request for general information letter. If you would like a private letter ruling, please take a moment to review the regulation and resubmit your request with the necessary information.

Issue

1. Are fees for the XXXXXXXXXXXXXXXX Program and mailing subject to sales or use tax?

Background

Your client is based in [two other states]. It has developed a program to provide practicing dentists a turnkey, patent-pending technology-driven system which

automatically promotes, tracks, and delivers valuable earned rewards for patients. Patients are given free access to XXXXXXXX travel and entertainment rewards for behaviors that benefit their oral health and appearance and drive profits to the dentist practice. As part of the service, your client will mail each selected patient household an announcement package explaining their dentist is participating in the XXXXXXXXXXXXXXXX Program and how it works for them. Your client processes the reward deposits and customer tracking, monthly emails with the dentist photo to reinforce their brand, program customer service, and reporting to the dentist's office. Your client bills the dentist a one-time set up fee and then a monthly program fee to maintain the program.

Discussion

Colorado levies sales and use tax on the sale of tangible personal property and only a limited number of services. See, §39-26-104, C.R.S. When the "true object" of the transaction is a service, the transaction is not subject to sales or use tax even though tangible personal property may be transferred to the customer. In such cases, the retailer, not the customer, is considered the consumer of the property and must pay sales or use tax on the property. For a more complete discussion of the true object test, see our FYI Sales 52. You can view and download this FYI by visiting our website at www.revenue.state.co.us and go to "Taxation" > FYIs > Sales Tax.

I note that your client is located outside of Colorado. You may wish to review our FYI Sales 5 regarding whether your client is doing business in Colorado.

Please note that the Department of Revenue administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home-rule cities and counties. For a complete list of state-collected local jurisdictions and home-rule cities and counties, see Department publication 1002 (DRP 1002) which is on our website under "Taxation" > "Forms" > "Businesses" > "Sales and Use."

Pursuant to state law, the Department is required to make publish redacted responses to requests for general informational letters. Your letter requesting this informational letter is not made public. See, §24-35-103.5(13), C.R.S. The regulation governing informational letters is available on our web site at:

<http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html>

I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments or concerns about the redacted letter.

I hope this is helpful. Please feel free to contact me if you have any questions.

Sincerely,

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