

STATE OF COLORADO

DEPARTMENT OF REVENUE
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GIL-2008-10

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

XXXXXXXXXXXXX
Attn: XXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

February 28, 2008

Re: taxability of school material

Dear XXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated December 20, 2007, re: the taxability of educational materials.

Issues

Does the company incur sales tax liability when it provides educational material to students?

Background

You provide the following background. Your client is an out-of-state company that provides distance educational learning and tutorial services to help its customers pass college equivalent end-of-course exams in several professional fields, primarily health care. These services include:

- Educational program assessment
- College transcript analysis
- Course evaluation
- Academic advising
- Academic support
- Course passage guarantees
- Tutors, as needed
- Membership in distance learning association
- On-line practice questions
- On-line practice tests
- On-line discussion forum (monitored by the company), which facilitates on-line study groups
- Welcome and guidance calls to encourage customers and help them with study plans, time management, study tips, contract questions, and school-related questions
- Guaranteed financing through third-party loans
- Subject matter updates

- Program design and time management tools
- Enrollment assistance services for affiliated colleges and universities
- Customers have unlimited access to program advisors, academic advisors, and customer service representatives.

In addition to these services, the company also provides customers with learning materials (i.e., 3-ring binders) for each subject. The company pays a third-party printer, which is located in [State], to print the material. The company ships the material by common carrier to customers located in Colorado. The company pays [State] sales tax to the printer on its cost to print the learning material. Customers are charged a single fee for each subject (e.g., biology, mathematics, etc.)

Most customers obtain financing through credit unions to pay for the tuition. If the customer defaults on the loan, the company will pay the credit union and the customer loses access to the above-referenced materials.

It is the company's understanding that no Colorado sales tax is due on course materials transferred to customers because the company is primarily providing a service provider and it is the consumer of the materials, not the customers.

Discussion

Colorado imposes sales and use tax on the sale, use, storage, or consumption of tangible personal property. §39-26-104(1)(a) and 204, C.R.S. However, the transfer of tangible personal property is not taxed if the true object of the transaction is a service and the transfer of property is only incidental to the service. In such cases, the seller is deemed the consumer of the property. See, Department Special Regulation 40 (Service Enterprises).

Traditional schools are generally considered service providers because the true object of the transaction is the instructional service provided by the teacher. The transfer of course materials from the school to the student is not taxable if the school does not separately charge for the material. The school is considered the consumer of the materials. Therefore, the sales of these material by the supplier to the school is taxable, unless the school is exempt (purchases by public schools are exempt).

In contrast, instructional materials provided for a home study course are generally taxable because the true object of the transaction are the books and materials themselves and the seller does not provide instructional services. A common example of such home study programs are professional continuing educational programs. The seller of these home study programs provides books, audio, and other material which the customer reviews at his or her own pace. There is no instructor that presents the material to the consumer. The materials are subject to sales and use tax. However, when these materials are offered as part of a seminar or lecture, the department will generally view this as a service transaction, and the program sponsor as the retailer, unless the sponsor separately states a charge for the material.

You present a scenario that is neither a traditional school setting nor a purely home study program. However, it is difficult to determine to what extent services are provided in the scenario you provide. Clearly, teachers do not present the company's curriculum. Although tutors are available, they are not the principal means by which customer learn the material. Instead, customers review the material much like a home study course. Moreover, tutors are provided only "as needed" and the frequency and magnitude of this tutor service is not disclosed. Group discussions appear to involve primarily customers, and the company's involvement is characterized simply as "monitoring." There are some adjunct services, such as transcript review, educational program assessment, and similar services, but these do not represent the core of the company's business. On-line practice questions and on-line practice tests are services.

Although there are a number of services listed, the core of the program and the principal source of learning appear to be the home study materials. Certainly, the on-line questions and testing are significant services, but it would appear that they supplement the reading material. In other words, a customer may be willing to acquire the materials and forego the practice questions and testing for a reduced price, but it is unlikely that the customer would be willing to enter a transaction in which he or she foregoes the reading material in lieu of the practice questions and tests. This is not say, however, that these services are not without value. On the contrary, I assume these other services provide real and significant value and customers are willing to pay a premium to acquire them. Nevertheless, on balance, I find that the scenario presented here is more akin to a home study course. Although services are provided, these do not predominate as in a traditional teacher / student setting. For these reasons, I conclude that the true object of the transaction you describe is not a service, and the transfer of material to the customer is a taxable transaction. I note that other states have reached similar conclusions. See, e.g., Florida Technical Assistance Advisement 07A-037, 10/25/2007; New York Advisory Opinion TSB-A-96(76)S, 12/13/1996.

The company should separately state the price for the materials and collect from customers sales or use tax. The tax should reflect the fair market value of the material and not simply the company's costs of production. The company should present to the North Carolina printer the company's Colorado retailer's sales tax license for purpose of acquiring the material exempt from North Carolina's sales tax. The company cannot claim a credit for any sales tax paid to North Carolina for the materials.

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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