

STATE OF COLORADO

DEPARTMENT OF REVENUE

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Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

GIL-2009-011

February 24, 2009

XXXXXXXXXXXXX
Attn: XXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

Re: XXXXXXXXXX

Dear XXXXXXXX,

You request a determination of the taxability of two products provided by XXXXXXXX ("Taxpayer"). The Department issues both general information letters and private letter rulings. General information letters provide general guidance on tax issues and are not binding on the department. Private letter rulings typically address the applicability of tax to a specific set of facts, are binding on the department, and require payment of a fee. For more information about letters and rulings, please see Department Regulation 24-35-103.5, which you can view on our web site at:

www.colorado.gov/revenue/tax and go to FYI/Publication > Rulings

Your request does not conform to the requirements for private letter ruling request. I will initially treat your request as one for a general information letter. However, you may resubmit this as a private letter ruling request.

Issues

Is the provisioning of XXXXX [Product A] and XXXXXXXX [Product B] subject to sales or use tax?

Background

You provide the following information. Taxpayer provides two web-hosted products: XXXXX [Product A] and XXXXXXXX [Product B]. Taxpayer's clients are retailers. When a retailer makes an exempt sale to its customer, the purchaser is required to produce an exemption certificate. The retailer instructs the customer to Taxpayer's Internet portal where all the exemption certificates for all fifty states are available. The customer chooses the exemption certificate applicable for the state, fills out the certificate on-line, prints out the certificate, signs the certificate and faxes the certificate to the Taxpayer

fax server located in XXXXXX [another state]. The certificate is immediately available for inspection by Taxpayer's client in PDF format on Taxcient's web site. No tangible personal property is transferred between any parties.

XXXXXXX [Product B] is a professional service providing sales and use tax preparation. Taxpayer's client sends monthly sales and use tax data electronically via Taxpayer's Internet portal. Taxpayer feeds the provided data into the sales and use tax preparation software, generates the paper and electronic returns, and mails or sends the returns to the respective taxing jurisdictions. At the end of the month, an electronic copy of those returns is provided to the client via Taxpayer's portal. No tangible personal property is transferred between any of the parties.

Discussion

Colorado imposes sales and use tax on the sale, use, storage and consumption of tangible personal property. See, §§39-26-104, C.R.S. With limited exceptions, services are not subject to these taxes. The preparation of tax returns is generally viewed as a service, even though tangible personal property in the form of a tax return and other forms is transferred to the client/customer. See, Special Regulation 52 (Service Enterprise).

Although Taxpayer has not requested that we review the propriety of these products, we note that the exemption certificate process may not be sufficient in certain circumstances. For example, a charitable organization holding an exemption certificate issued by the department must produce to the retailer a copy of the certificate. See, e.g., FYI Sales 1. In other cases, a form prepared by the purchaser is appropriate. For example, a purchaser of certain farm equipment must provide an affidavit warranting that the equipment will be used for agricultural purposes. See, Department Form 0511 and FYI Sales 75. These forms and publications are available on our web site at: www.Colorado.gov/revenue/tax.

Miscellaneous

Pursuant to state law and department regulation 24-35-103.5, the Department will make public a redacted version of this letter. Your letter requesting this general information letter is not made public. 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 objection concerning the redacted letter.

We hope this general information letter is helpful. As noted earlier, you may request a private letter ruling which will provide a determination regarding your specific circumstances.

Sincerely,

Neil L. Tillquist
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