



COLORADO
Department of Revenue

Taxation Division

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GIL-16-007

May 18, 2016

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXX (“Company”) a request for guidance on whether Company is liable for sales tax on commission paid to Company for living accommodations.

The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 1 CCR 201-1, 24-35-103.5.

The Department treats your request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction. If you would like the Department to issue a private letter ruling on the issues you raise, you must submit a new request and provide the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

Does the calculation of sales tax on living accommodations booked by Company include the commission retained by Company?

Background

Company is a professional marketing and booking agent for vacation rental properties located in Colorado. Company is responsible for marketing and booking of properties on behalf of property managers. Company does not provide management services. Customers contact Company, either through Company’s website or by calling the Company. In either case, customers identify the living accommodations that they would like to book and pay Company the advertised rate. Company notifies the property management company of the booking and forwards the customer’s payment, less an amount that Company retains for as a commission.

Structure of Analysis

To determine whether Company is required to collect sales tax on the commission, the Department will examine the following questions:

1. Is the service described taxable under § 39-26-104(1), C.R.S.?
 - a. Is the service the furnishing of living accommodations taxable under § 39-26-104(1)(f), C.R.S.?
 - b. Is Company an entity identified in § 39-26-102(11), C.R.S. as one who is furnishing living accommodations?
2. How is sales tax calculated pursuant to § 39-26-104(1), C.R.S.?

Discussion

Colorado levies sales tax on the entire amount charged to any person for rooms or accommodations for a period of thirty days or less (emphasis added).¹ The taxable sale of a room or accommodation is defined as,

the furnishing [of] rooms or accommodations by any person, ..., or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for consideration uses, possesses, or has the right to use or possess any room ... under any concession, permit, right of access, license to use, or other agreement, or otherwise.²

Company appears to be acting in a representative capacity to the property managers and, as such, falls within the application of this statute.

Sales tax is calculated on the price paid by the customer.³ Colorado's sales tax statute expressly provides that "there is levied and there shall be collected and paid a tax . . . [o]n the entire amount charged to any person for rooms or accommodations as designated in section 39-26-102(11)."⁴ That portion of the customer's payment taken by Company as a commission is part of the price paid by the customer and, therefore, is included in the sales tax calculation.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/tax for more information about state and local sales taxes.

¹ § 39-26-104(1)(f), C.R.S. and § 39-26-704(4), C.R.S.

² § 39-26-102(11), C.R.S.

³ § 39-26-104(1), C.R.S.

⁴ § 39-26-104(f), C.R.S. (emphasis added).

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue
Office of Tax Policy Analysis