

STATE OF COLOR



DEPARTMENT OF REVENUE
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GIL-2007-16

Bill Ritter, Jr.
Governor

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Executive Director

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

December 4, 2007

Re: taxability of services and equipment

Dear XXXXXXXXXX,

This letter is in response to your letters to the Colorado Department of Revenue, dated June 14, 2007, re: the taxability of products and services. We apologize for the time it has taken to respond to your inquiry.

Issues

1. Are the consulting services for digital video surveillance systems taxable in Colorado?
2. Are the project management services taxable?
3. Is property taxed in another state also taxable in Colorado?
4. Does the taxability of any service or product change if a related entity provides related services?

Background

You state that [Company A] provides security services and is incorporated in [State]. [Company A] has a "qualified" subsidiary, [Company B], which provides consulting and management of closed circuit television design and installation. These digital video surveillance systems are designed and used for security enhancement. [Company B] has three services, described below. [Company A] issues bills to customers on behalf of [Company B]. Some of the locations where [Company B] provide services, [Company A] provides security services. In such cases, employees of [Company A] operate the closed circuit television system that is installed by [Company B].

The three services provided by [Company B] are:

1. [Company B] sends representatives to a client's location and provide consulting and design services for digital video surveillance systems. These services include defining operational parameters, physical property review, and reports of technical recommendations and cost estimates. [Company B] bills for consulting services and related expenses incurred by the [Company B] representative who traveled to the location.
2. [Company B] provides project management during installation of digital video surveillance systems. These services include pre-installation meetings with the installation contractor, progress and technical inspections during installation, system set up and programming, training sessions with operators, and comprehensive inspection and certification following installation. [Company B] invoices for a project

management fee and associated expenses that [Company B] employees incur while working on the project.

3. At the client's option, [Company B] facilitates the acquisition of all required recommended equipment for a project. [Company B] acquires the items on behalf of the client. Vendors of the equipment charge [Company B] sales tax. [Company A] then invoices the client the costs incurred to acquire the equipment and a 5% management fee for the service and convenience that [Company B] provides.

You ask a series of questions regarding the applicability of Colorado sales and/use tax based on the billing practices outlined above. You enclosed a sample billing statement.

Discussion

1. *Consulting services described in paragraph 1, above, are not taxable if separable from the sales of the equipment and the prices is separately stated on the invoice.*

Colorado imposes a sales tax on the sale of tangible personal property. §39-26-104(1)(a), C.R.S. Tax is imposed on all services that are part of the sales price, unless the services are separable from the sale of property and separately stated on the invoice. §39-26-102(12), C.R.S.; *A.D. Store Co. v. Department of Revenue*, 19 P3d 680 (Colo. 2001).

A retailer will often provide its expertise in assisting a customer is selecting a product. For example, the tax on the sale of custom-made tangible personal property must include the cost of the retailer's service rendered in connection with the manufacture of the product. Such services are part and parcel of the purchase of the product and the department will not view them as separable from the sale of the product. However, services that are "separable" from the sale of the product are not taxable.

It is not clear from your letter whether the consulting services you provide are separable from the sale of the digital video system. For example, it is not clear whether consulting services you provide are chargeable even if the customer does not purchase your equipment or whether there is any additional manufacturing of the equipment resulting from the consulting. The department will likely not challenge the transaction if the company charges for the consulting fee even if the purchase does not purchase the equipment and if there is no significant additional manufacturing required after consultation, but only assemblage of existing equipment components.

Please note, however, that the sales and use taxes of "home-rule" cities and counties in Colorado are not administered by the department. Please contact these home-rule governments for information about the applicability of taxes they levy. For a list of all cities, counties, special districts, and home-rule jurisdictions, see Department publication DRP 1002, which you can view and download from our web site at: www.revenue.state.co.us (go to Taxation > Forms > Businesses > Sales and Use Tax).

2. *Project management fee described in paragraph 2, above, are not taxable if separable from the sale of the equipment and separately stated on the invoice.*

See response to Question No. 1, above. The department will likely not challenge the taxability of project management services if the customer has the option not to acquire project management services when it purchases the equipment.

3. *[Company] is likely not entitled to a credit for taxes paid to another state.*

Colorado imposes a tax on the sale, use, storage or consumption or tangible personal property. In general, the incidence of sales or use tax should fall on the ultimate consumer. Thus, the sale by [Company B] to the client is subject to Colorado sales tax. The 5% management fee charged to the client for acquiring the equipment must be included in the sales or use tax calculation.

[Company B's] purchase from the vendor is a "sale-for-resale" (i.e., wholesale) transaction and, therefore, is not a taxable transaction in most, if not all, other states. Although Colorado allows a credit for taxes paid another state, the credit is allowed only if the tax was legally due in the other state. §24-60-1301 (Article V, subparagraph 1), C.R.S.; see, also, §39-26-713(2)(f), C.R.S. In the circumstances you describe, it is likely that

the tax was not due in the first state because most states have a "sale-for-resale" exemption from taxation. Therefore, and assuming that the wholesale exemption applied to the purchase from the supplier, neither the client, as the consumer, nor [Company B], as the retailer, are not entitled to a credit for tax paid to another state.

[Company B] may have the right to claim a refund in states where it has paid sales tax on wholesale transactions. Should the original state reject a request for a refund by you on the grounds that the transaction was not a wholesale sale and, therefore, tax was legally due, then the department will re-examine whether to grant a credit for the sale by [Company] technologies to the client.

4. *Taxability of the above items does not change if [Company A] provides security services at the location.*

No. See response to Question 3, above.

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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