STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
(303) 866-3091
FAX (303) 866-2400

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

GIL-2007-7revised

XXXXXXXXXXXX
Attn: XXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

November 5, 2008

Re: satellite receiver rental

Dear XXXXXXXXX,

By letter dated December 4, 2007, the department provided you information regarding the applicability of sales and use tax to equipment your company provides to customers at a discount in conjunction with satellite TV service. The purpose of this letter is to clarify and correct information in our correspondence.

Issues

1. Is the free rental of a satellite TV receiver, which is offered with non-taxable TV service for which a charge is assessed, taxable?
2. Can the company seek reimbursement from customers for taxes due but uncollected?

Background

You state that subscribers who choose to obtain their satellite receiver pursuant to a lease are billed $4.99 per month, plus applicable state and/or gross receipts tax. They also receive a $4.99 credit on the same monthly bill for the first leased unit. All additional receivers are billed $4.99 each, plus tax, per month. There is no other credit for any receiver other than the first receiver. You ask whether the credit for the first receiver is a rebate or a point of sale discount. You also ask whether the charge of $4.99 for the first receiver is subject to sales tax. Finally, you ask whether your company can reimburse itself by collecting the tax from the subscriber if the charge for the first leased receiver is subject to tax and that tax is a use tax.

Discussion

1. *The company is liable for use tax when it provides a customer free rental of equipment as an inducement to the customer to enter into a contract for satellite TV services and rental of the equipment.*

In general, a retailer is entitled to a wholesale sale exemption when it purchases from a supplier goods that the retailer intends to resell to a customer. This wholesale sales tax exemption also applies when the retailer intends to lease the goods to the customer for more than three years or, if the lease to the customer is less than three years, the retailer obtains permission from the department to purchase the goods tax free. See, generally, §§39-26-102(23) and 713, C.R.S. customer

However, when the retailer subsequently uses goods in its inventory for its own purposes, such as marketing, then the retailer must pay use tax for its use of those goods.[1] See, Department regulation 39-26-713.2(b); compare, Utah Advisory Opinion No. 96-127DJ, 09/27/1996 (retailer must pay use tax when it offers goods at a discount in conjunction with non-taxable services), *Mercury Cellular Telephony Co. v. Calcasieu Parish of Louisiana, et al.*, 773 So 2d 914 (LA 2000), and Mass. Regs. Code 64H.1.4(1)(Example 5). Use tax is calculated based on the retailer's acquisition cost from the supplier. *International Business Machines v. Charnes*, 601 P.2d 622 (Colo. 1979).

In the circumstances you describe, the company uses the satellite receiver to market its goods and services. Therefore, the company is liable for use tax for the one-month period. This assumes, of course, the company has not previously paid sales tax on its acquisition of the equipment from the supplier.

2. *The company, not the customer, is liable for the tax.*

The incidence of taxation for use tax falls on the company, not the customer. However, and as is the case of other marketing costs of the company, the department assumes the company passes such costs onto customers through a variety of pricing mechanisms. The company is not prohibited from passing the cost of this use tax onto the customer in a similar fashion. It would be inappropriate, however, for the company to state to the customer that the company is collecting a tax for which the customer is liable to the department.

Please note that the department does not collect sales and use taxes for "home-rule" cities and counties. You can find a list of these jurisdictions by visiting our web site at:

www.revenue.state.co.us (go to Taxation > Forms > Businesses > Sales and Use > DRP 1002)

Contact those governments for information about their taxes.

---

[1] As an aside, wireless telecommunications providers that provide discounts on equipment sold in conjunction with taxable telecommunication services are not liable for use tax on such discounted equipment. See, §39-26-202(1)(c), C.R.S.

The department recently enacted a regulation governing requests for tax advice. We issue both private letter rulings and general information letters. See, §24-35-103.5, C.R.S. and Department regulation 24-35-103.5. Private letter rulings are issued in response to tax questions relating to specific factual settings and are binding on the department. 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

I am treating your request as a request for a 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.

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.

Respectfully,

Neil L. Tillquist
Phone: 303.866.5627
Email: ntillquist@spike.dor.state.co.us

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
(303) 866-3091
FAX (303) 866-2400

Bill Ritter, Jr.
Governor

Roxy Huber
Executive Director

GIL-2007-7

XXXXXXXXXXXXX
Attn: XXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

December 4, 2007

Re: satellite receiver rental

Dear XXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated June 29, 2007, re: taxability of satellite receivers. We apologize for the time it has taken to respond to your inquiry.

Colorado Department of Revenue provides informational letter as a service to taxpayers. These letters represent the opinion of knowledgeable and experienced department staff and can be a valuable resource in making informed decisions regarding your tax obligations. However, these letters are not binding on the department. §24-35-103.5, C.R.S.

Issues

1. Is the free rental of a TV receiver, which is offered with non-taxable TV service for which a charge is assessed, taxable?
2. Can the company seek reimbursement from customers for taxes due but uncollected?

Background

You state that subscribers who choose to obtain their satellite receiver pursuant to a lease are billed [dollar value] per month, plus applicable state and/or gross receipts tax. They also receive a [dollar value] credit on the same monthly bill for the first leased unit. All additional receivers are billed [dollar value] each, plus tax, per month. There is no other credit for any receiver other than the first receiver. You ask whether the credit for the first receiver is a rebate or a point of sale discount. You also ask whether the charge of [dollar value] for the first receiver is subject to sales tax. Finally, you ask whether your company can reimburse itself by collecting the tax from the subscriber if the charge for the first leased receiver is subject to tax and that tax is a use tax.

Discussion

1. *When a taxable sale of property and a non-taxable service are bundled and are inseparable, tax is due on the reasonable price of a "free" leased property.*

Although not explicitly stated in your letter, I assume that the customer cannot receive television service from your company without the receiver, and that the receiver you provide is the only receiver that will allow the customer to use your television service. Television service is a non-taxable service. §39-26-104(1)(a), C.R.S. (tax applies to sale of tangible personal property). The rental of the receiver is a taxable "sale" because a sales tax applies to the lease of tangible personal property. §39-26-102(23), C.R.S

In general, a tax is computed based upon the sales price. §39-26-102(12), C.R.S However, the Department will not allow a retailer to avoid the imposition of sales tax by subsuming the sale or lease of a taxable service into the sale of a non-taxable service and, thereby, treat the entire transaction as non-taxable. See, e.g., Colorado Tax Update No. 07/01/2001 (Department rejects "free" components bundled with non-taxable internet access service) (copy enclosed). Tax should be computed based on the value of the rental, which is the [dollar value] monthly charge.

2. *A lessee is liable to the lessor for tax on leased equipment.*

In general, a purchaser/lessee is obligated to pay the seller/lessor for tax due on leased equipment. §39-26-106(2)(a), C.R.S (purchaser owes a debt to retailer in amount of tax due). A retailer, who fails to collect a tax that is due, is liable for the tax. The department does not offer any advice regarding whether you have the contractual right at this time to recover this tax from customers.

Please note that the department does not collect sales and use taxes for "home-rule" cities and counties. You can find a list of these jurisdictions by visiting our web site at:

www.revenue.state.co.us (go to Taxation > Forms > Businesses > Sales and Use > DRP 1002)

Please contact those governments for information about their taxes.

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,

Steve Asbell
Taxpayer Service Division
Phone 303.866.3889
Email sasbell@spike.dor.state.co.us