



COLORADO
Department of Revenue
Taxation Division

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GIL-15-018

June 8, 2015

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Dark Fiber

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXX ("Company") a request for guidance to determine whether a monthly lease of unlit fiber optic cable is subject to Colorado sales tax.

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 but 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 Regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department treats this request as one for 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 binding on the Department. If a retailer would like the Department to issue a private letter ruling on the issue raised here, the retailer can resubmit a request and fee in compliance with Department Regulation 24-35-103.5..

Issue

Is a monthly leasing charge by Company to its corporate clients for the use of unlit fiber optic cable subject to Colorado sales tax?

Background

Company is a local exchange carrier licensed to do business in Colorado. Company owns a network of "fiber optic cables" which (when activated) is used to support voice, data, and Internet service applications. The bundles of fiber optic cables are buried underground and accessible only through highly secured "locked-box" locations. Company leases the right to use part of this fiber optic cable network to a variety of corporate clients including other providers of telecommunications services. The lease agreements Company enters into with its customers limit the rights of those customers exclusively to usage of the fiber optic

network (i.e., Company maintains ownership of the fiber optic cable infrastructure at all times).

What Company is leasing is the raw fiber optic cable "capacity." Essentially, Company is leasing "unlit" fiber optic cable - often referred to as dark fiber. In order to activate the fiber optics, the leasing entity must energize or "light" the fiber optics with an external electronic energy source. Company may also provide the energy source needed to "light" the fiber optic cable and lease "lit fiber". Only "lit fiber" may be used to transmit voice data communications.

Discussion

Colorado levies sales and use tax on the sale, use, consumption and storage of tangible personal property.¹ Generally speaking, tangible personal property that is incorporated into real property and cannot be removed without substantial damage is considered real property.² The Department has not formally addressed in regulation whether dark fiber is tangible or real property.³ However, it is our general understanding that dark fiber is tangible personal property subject to tax. Therefore, the leasing of such cable may be subject to sales or use tax.

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.

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

¹ §§ 39-26-104(1) and 202, C.R.S.

² 1 CCR 201-4; Department Regulation 39-26-102(15).

³ The Department provided similar guidance in General Information Letter GIL-07-004, which can be viewed at www.Colorado.gov/revenue/tax > Legal Research > Rulings.