



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

PLR-16-007

April 12, 2016

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: E-book, Online Courses, Virtual Lessons

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Department Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in Department Rule 24-35-103.5. This ruling cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

Does Company have an obligation to collect sales tax on e-books, online courses, and virtual lessons?

Conclusion

1. Company has an obligation to collect sales tax on e-books because an e-book is tangible personal property.
2. Company has an obligation to collect sales tax on online courses because the instructional material and videos being sold are the sale of tangible personal property and not a service.
3. Company's virtual lessons are exempt from sales tax because these are services provided by Company.

Background

Company is located in Colorado and operates a website by which it sells e-books. The e-book is a .PDF document that people can purchase and download. Company also plans to introduce new products in the coming years, such as an online course and virtual lessons. Customers will purchase and access the online course on Company's website with a password. The online content will consist of written material and videos. Lastly, Company plans to sell virtual lessons that customers can purchase. To conduct the virtual lesson, customers will submit a video and pay to have it critiqued by an instructor who will write comments for the customer and respond with a video of their own.

Structure of Analysis

To determine whether Company's ebooks, online courses, and virtual lessons are subject to tax, the Department will examine the following questions:

1. Is the item taxable under § 39-26-104(1), C.R.S.?
 - a. Is the item tangible personal property sold or purchased at retail?
 - b. If the item is not purely tangible personal property, does the item contain both potentially taxable and nontaxable elements?
 - i. If it contains both potentially taxable and nontaxable elements, are the nontaxable service components and taxable tangible personal property separable and separated?
 - ii. What is the true object of the customer in the transaction?
2. Is the item eligible for any exemptions?

Discussion

E-book

Colorado levies sales and use tax on the sale, use or consumption of tangible personal property in Colorado.¹ Tangible personal property is statutorily defined as "corporeal personal property."² Corporeal is typically defined as that which is physical, tangible, or material in nature.³ In contrast, intangible personal property does not have a physical existence and is conceptual in nature, such as a contract, stock, and goodwill.

E-books are tangible personal property because they have a physical existence. Unlike intangible personal property, they are not merely concepts or ideas, but, rather, are part of the real world. This is particularly true because these books can be downloaded and printed out by the customer. Thus, the sale of Company's e-book is subject to sales tax.

We acknowledge that the taxability of electronically transmitted goods is a complex and controversial area of taxation. Among other things, we note that beginning July 1, 2012 and as stated in Department Publication FYI Sales 89, electronically transmitted computer software is not subject to sales or use tax.⁴ However, this statute does not govern the sale of digital goods, such as electronically delivered books.

Online Course

As noted above, the sale of tangible personal property is subject to sales tax. However, with a few exceptions, the sale of services are not subject to sales tax. The principal issue relating to the online course is whether the video and written content of the online course is tangible personal property or a service. The provision of education and training is generally a nontaxable service. For example, schools are generally considered the sellers of a service and, therefore, charges for instruction are not subject to sales tax. On the other hand, the sale of non-custom DVDs providing instruction is considered the sale of tangible personal property and subject to tax.⁵

¹ § 39-26-104(1) and 202, C.R.S.

² § 39-26-102(15), C.R.S.

³ Merriam-Webster Desk Dictionary (1995); American Heritage College Dictionary, 3rd Ed. 1993.

⁴ § 39-26-102(15)(c)(I), C.R.S.

⁵ See, for example, Florida Technical Assistance Advisement No. 94A-046, 08/03/1994 (instructional videos for homeschooling are taxable sales of tangible personal property); West Virginia Technical Assistance Advisory No. 88-003, 05/16/1988 (self-study instructional videos

Generally, to be considered a nontaxable educational or training service, the program must be a course of instruction, tutoring, personal training, or a similar activity where there is some form of interaction between student and instructor.⁶ Instructional videos alone do not provide a service to the customer because there is no access to an instructor. The online course provides users access to instructional material and videos that are used for self-study. This is analogous to accessing textbooks, "how-to" books or videos, or manuals. Simply viewing or reading materials that may be considered instructional in nature does not constitute a course of instruction, tutoring or training as a service. Training materials such as books, videos, and manuals, including such items delivered electronically, digitally, or through any other medium, are tangible personal property. Thus, the online course is the taxable sale of tangible personal property.

Virtual Lessons

The principal issue relating to the virtual lesson is whether the video and written responses of the virtual lesson are tangible personal property or a service, and, even if it is tangible personal property, is the "true object" of the transaction a nontaxable service. The virtual lessons contain videos and written comments. There is no question that the virtual lesson contains tangible personal property components in the form of the written comments and video response. However, there is also a service component to the virtual lessons in the form of a critique by an instructor who will write comments for the customer and respond with a video of their own. Based on the facts provided, the tangible personal property components are neither separable nor separated from the service components in this transaction because without the tangible personal property, there is no means to convey the critique.⁷ Because the bundled transaction cannot be separated, we look to the true object test. When applying the true object test to the virtual lessons, we find that the true object of the transaction is not the video and written comments themselves, but the critique on the video and in the written comments. The virtual lessons are more properly viewed as the sale of nontaxable services, and the tangible personal property used in the transaction is incidental to the performance of the service. Thus, the virtual lessons are not subject to Colorado sales tax.

Miscellaneous

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and 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.

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. The ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this

are taxable sales of tangible personal property, except if the instruction relates to a profession).
See also, FYI Sales 52 "Service Enterprises"

⁶ Texas Policy Letter Ruling No. 200812241L, 12/16/2008.

⁷ See 1 CCR 201-5, Special Regulation 52, Service Enterprises.

ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling 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 version of the ruling.

Sincerely,

Erika Hoxeng
Colorado Department of Revenue
Office of Tax Policy Analysis

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.