

# STATE OF COLORADO

DEPARTMENT OF REVENUE  
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John W. Hickenlooper  
Governor

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GIL-11-014

July 29, 2011

XXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Re: Electronically Delivered Newspapers

Dear XXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance on the collection of sales and use tax on electronically delivered newspapers. The 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 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.taxcolorado.org](http://www.taxcolorado.org) > FYI/Publication > Rulings.

The department initially treats your request as one of a general information letter. If you would like the department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. 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.

## Issue

1. Are newspapers published monthly subject to sales tax?
2. Are newspapers delivered electronically subject to sales tax?
3. Are magazines delivered electronically subject to sales tax?

## Background

Company is a supplier of tax compliance software and is inquiring into the taxability of newspapers delivered electronically.

## Discussion

### 1. *Monthly newspapers are subject to sales tax.*

Colorado imposes sales or use tax on the sale, use, storage or consumption of “tangible personal property.” Tangible personal property is defined as corporeal personal property. Newspapers are corporeal personal property and, therefore, would ordinarily qualify as tangible personal property. However, Colorado law expressly excludes newspapers that qualify as a “legal publication” from the definition of tangible personal property.<sup>1</sup> As such, qualifying newspapers are exempt from sales and use tax.

The statute defining a “legal publication” sets forth a list of qualifying newspapers, which are generally classified by the frequency of distribution (e.g., daily, five days a week, etc.). Section §24-70-102 lists the following newspapers as legal publications:

“Every newspaper printed and published daily, or daily except Sundays and legal holidays, or which shall be printed and published on each of any five days in every week excepting legal holidays and including or excluding Sundays, shall be considered and held to be a daily newspaper; every newspaper printed and published at regular intervals three times each week shall be considered and held to be a tri-weekly newspaper; every newspaper printed and published at regular intervals twice weekly shall be considered and held to be a semi-weekly newspaper; and every newspaper printed and published at regular intervals once a week shall be considered and held to be a weekly newspaper.”

A newspaper distributed monthly does not qualify as a “legal publication” and, consequently, is not exempt from Colorado sales and use taxes.

### 2. *Monthly newspapers delivered electronically are subject to sales tax.*

Newspapers that do not qualify as a legal publication are not exempt from sales and use tax, regardless of whether they are delivered electronically. As we noted above, Colorado levies sales and use tax on the sale, use, storage, or consumption of

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<sup>1</sup> “Tangible personal property means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S., preprinted newspaper supplements...” §39-26-102(15), C.R.S.

tangible personal property.<sup>2</sup> Intangible personal property is conceptual in nature, such as a contract, stock, and goodwill.<sup>3</sup> When we speak of digital goods, we are referring not to a concept but, rather, to something that exists in the physical world. Just as a digital song or digital photograph stored and played or displayed on an electronic device is physical property that is perceptible by the senses, a newspaper electronically delivered is also part of the physical world.

We acknowledge that this is a complex and unsettled area of tax. Indeed, the department's view of electronically delivered software has varied over the years. In the absence of clear legislative direction on this issue, the department must evaluate this issue in light of existing statutes. Digital documents, as is true of digital photographs, music, books, movies, and newspapers, have a physical existence and are no less taxable than had they been delivered in paper or celluloid form.

A number of states that have addressed this issue have reached similar conclusions. See, e.g., Arizona Private Taxpayer Ruling LR05-010, 09/26/2005; Wisconsin Sales and Use Tax Report No. 1-09, 03/01/2009 (describing statutory changes that impose sales tax on certain digital goods); *Robert Smith Flipflopfoto 116 S. 8th Street Opelika, AL 36801-4914, Taxpayer, v. State of Alabama Department of Revenue.*, S. 05-1240, 11/17/2006 (digital photographs are tangible personal property subject to sales tax; Texas Policy Letter Ruling No. 200101966L, 01/03/2001 (digital photographs are tangible personal property); Washington Other Official Material / Digital Products March 3, 2010 (electronically downloaded digital products are taxable tangible personal property).

### 3. *Magazines delivered electronically are subject to sales tax.*

Unlike qualifying newspapers which are expressly excluded from the definition of tangible personal property, magazines are tangible personal property.<sup>4</sup> For the reasons discussed above, electronically delivered magazines are tangible personal property and subject to sales tax.

## Miscellaneous

Pursuant to state law and department regulation 24-35-103.5, noted above, 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.

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<sup>2</sup> See, generally, 39-26-104(1) and 202, C.R.S.

<sup>3</sup> Ibid.

<sup>4</sup> 1 CCR 201 5 Special Regulations for Specific Businesses SR-32 Newspapers, Magazines and Other Publications,

Please contact me within 60 days from the date of this letter if you have any questions, comments, or objection concerning the redacted letter.

I hope this is helpful. Please feel free to contact me if you have any questions.

Sincerely,

Neil L. Tillquist  
Colorado Department of Revenue