



COLORADO
Department of Revenue

Taxation Division

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GIL-17-008

April 3, 2017

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Marketing Material

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of a client (“Company”) a request for guidance on whether sales or use tax applies to Company’s marketing material.

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 Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as 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 Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

1. Does sales tax apply to Company’s marketing material?
2. Are deductions allowed for creative development, costs of independent contractors, freight, and audit services if these items are separately stated on the Company’s invoice to its client?
3. Can Company or an independent contractor purchase printed materials exempt as a purchase for resale?

Background

Company is engaged in the business of designing, creating, and delivering marketing materials. Clients hire Company to create and distribute marketing material to the client’s potential customers by leaving the material at the customer’s location (door hanger

material). Clients supply Company with finished artwork that will be used in printed advertisements. Company works with clients to develop a marketing strategy and then sends the finished artwork to a printer. The printed material is then given directly to independent contractors who deliver the material to the potential customers. Customers receive the door hanger material at no cost. Company's employees perform audits to verify that the material is delivered to potential customers. Company charges clients a lump sum price based on the number of door hanger material. The price includes the cost for development of the printed material, printing cost, audit verification, and the cost of independent contractors.

Structure of Analysis

To determine whether Company's transactions are subject to sales tax, the Department will examine the following questions:

1. Is a charge for printed marketing materials and various other activities subject to sales tax pursuant to § 39-26-104, C.R.S.?
2. Which separately stated charges for printed marketing material, creative development, distribution, audit, and shipping are included in the sales tax calculation?
3. Is Company's purchase of printed material from the printer an exempt wholesale purchase for resale pursuant to § 39-26-102(19), C.R.S.?

Discussion

Colorado imposes sales and use tax on the sale or use of tangible personal property but generally not on the sale of services.¹ It appears that Company is selling finished marketing material to clients and, on behalf of clients, distributing the material to potential customers. When a retailer sells taxable tangible personal property, such as the printed marketing material in this case, together with non-taxable services for a lump sum price, then the sales tax is calculated on the lump sum price if the true object of the transaction is the taxable goods.² The Department would likely view the printed marketing materials as the true object of this transaction because the marketing material is what the client truly desires.

Even if the price for the taxable goods and services are separately stated, the price for the services is included in the tax calculation if the sale of the goods and services are not separable. For example, services that go into the making of custom goods or goods made to order are included in the tax calculation even if the price for such service is separately stated. The sale of goods and service are also not separable if the retailer requires the buyer to purchase not only the taxable goods but also nontaxable services.

If most of Company's creative development is related to the design of the marketing materials, then the Department would likely view the charge as an inseparable part of the manufacturing or fabrication of the material and the charge must be included in the sales tax calculation.³ If the marketing development is not related to the design of printed material but related primarily to how, where, and when to market the printed material, the Department would likely view such services as separable from the printed material, unless

¹ §§ 39-26-104 and 202, C.R.S.

² See Department Rule 1 CCR-201-5, Special Regulation 52.

³ § 39-26-102(12), C.R.S. (charges for services rendered in the manufacture of custom made goods or goods made to order are included in the sales tax calculation).

the buyer is required to purchase the services as part of the sale of the tangible personal property.⁴

Company's purchase of printed materials from the printer appears to be a nontaxable wholesale purchase for resale.⁵

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
Office of Tax Policy Analysis

⁴ See Department Private Letter Ruling PLR-11-004

⁵ § 39-26-102(19)(a), C.R.S.