STATE OF COLORADO

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GIL-12-017

December 31, 2012

XXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX

Re: Products for the Blind and Legally Blind

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on products used by the blind and legally blind to assist them with daily functions.

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 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 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 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

Are products to aid those who are blind and legally blind enumerated in the ruling request subject to Colorado sales or use tax?

Background

Company sells products to help those who are blind and legally blind to read, attend school, obtain employment and, generally, be more independent. Company's products include, but are not limited to, the following:

1. Braille note-takers that speak with or without Braille displays
2. Braille printers and embossers
3. Software for the blind and legally blind
4. Devices that read letters and mail to the blind
5. Mobile phones that are adapted for the blind
6. Electronic magnifiers that enable people who are legally blind to read

Company also sells the following devices to help those who are deaf and deaf blind.

7. TTYs
8. Deaf Blind Communicators

All of these products are herein referred to as ("Products")

Discussion

The Department does not have a regulation or publication that specifically addresses your inquiry. The following is a general discussion of the tax issues surrounding your request.

Colorado imposes sales and use tax on the sale of tangible personal property.[1] There are three exemptions that relate to visual and hearing aids. The first exemption is for optical sales and services.

1) Corrective eyeglasses (including sunglasses and reading glasses), frames sold in connection with corrective lenses, contact lenses, and similar articles that optically correct a person's vision are exempt from sales and use tax, regardless of whether the article was dispensed pursuant to a prescription.

   a) Limitation on exemption.

      i) Binoculars, telescopes, a single lens magnifying device (e.g., a jeweler's lens, a single magnifying lens for computer screens), contact lenses that have only a cosmetic purpose and Braille reading devices are among articles that are not included within this exemption.[2]

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[1] §§39-26-104 and 202, C.R.S.

[2] 1 CCR 201-5: SR-33, "Optical Sales and Services." You can view this Regulation on the Department's web site at www.colorado.gov/revenue/tax > Tax Library > Rules and Regulations > Final Tax Regulations > Sales and Use Tax > SR 33.

The optical sales and services exemption explicitly excludes Braille reading devices.

Colorado also exempts sales of prosthetic devices. The Department defines a prosthetic device as an artificial part which aids or replaces a bodily function and which is designed, manufactured or adjusted to fit a particular individual.[3] Although we do not decide here, it does not appear that any of the devices you list are "designed, manufactured or adjusted to fit a particular individual."

The third exemption under is for durable medical equipment.

(I) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription, that:

a. can withstand repeated use;
b. is primarily and customarily used to serve a medical purpose;
c. is generally not useful to a person in the absence of illness or injury,
d. is not worn in or on the body.

(II) "Durable medical equipment" includes, but is not limited to, hospital beds, intravenous poles and pumps, trapeze bars, toileting aids, bath and shower aids, standing aids, adaptive car seats, communication devices, and any related accessories for such items.[4]

The principal issue here is whether Braille devices serve a "medical" purpose. This term is not defined by statute. Medicine is generally defined as the treatment of disease.[5] In turn, disease is defined as "an impairment of the normal state of the living animal or plant body or one of its parts that interrupts or modifies the performance of the vital functions, is typically manifested by distinguishing signs and symptoms, and is a response to environmental factors (as malnutrition, industrial hazards, or climate), to specific infective agents (as worms, bacteria, or viruses), to inherent defects of the organism (as genetic anomalies), or to combinations of these factors."[6] However, in order to qualify for this exemption, the equipment must be purchased pursuant to a prescription.

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

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[3] Department Regulation 39-26-717.1. You can view this Regulation on the Department's web site at www.colorado.gov/revenue/tax > Tax Library > Rules and Regulations > Final Tax Regulations > Sales and Use Tax > Regulation 39-26-717.1.
[4] § 39-26-717(2)(a), C.R.S.
[5] Merriam-Webster Dictionary.
[6] Merriam-Webster Dictionary.

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/revenue/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,

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