STATE OF COLORADO

DEPARTMENT OF REVENUE
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PLR-12-007

December 31, 2012

XXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX

Re: Private Letter Ruling

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Regulation 24-35-103.5. This letter is the Department's private letter ruling.

Issues

1. Does sales tax apply to the subscription fee charged to customers for access to Company's publication on Company's Web site?
2. Is Company's subscription fee charged to customers for access to Company's online proprietary stock screens and comparative performance ratings subject to sales or use tax?

Conclusion

1. Sales tax does not apply to Company's subscription fee charged to customers for access to Company's publication on Company's Web site.
2. Company's online proprietary stock screens and comparative performance ratings are not subject to sales or use taxes.

Background

Company is a financial news and research organization that provides finance information to customers, who typically are investors in financial instruments such as stocks and bonds. Company has historically published, in paper form, a daily (except Sundays) publication containing financial information. Company characterizes this publication as a newspaper. Company has more recently provided its customers

access to an exact duplicate of this publication on its Web site. The publication can be downloaded as a PDF file. Company also provides financial proprietary stock screens, comparative performance ratings, and identifies stock leaders as they emerge on its Web site. Customers pay a subscription fee to receive the publication and access to financial information provided by Company on its Web site. It is not clear from the ruling request whether customers pay one fee for access to both the publication and the financial information or whether customers can purchase them separately.

Discussion

Newspaper

Colorado levies sales and use tax on the sale or use of tangible personal property. §§39-26-104(1)(a) and 202, C.R.S.[1] Colorado has, by statute, expressly excluded newspapers that qualify as a "legal publication" from the definition of tangible personal property.[2] As such, newspapers that meet the qualifications of this section are exempt from sales and use tax. Newspapers that are "printed and published" daily, or daily except for Sundays and legal holidays, qualify as a "legal publication."[3]

Two issues arise when addressing the taxability of Company's online publication. First, we must decide whether Company's publication is a newspaper.[4] Colorado statutes do not define what constitutes a newspaper. In the absence of such definitions, we look to how the term is commonly used and understood. A newspaper is commonly understood to be a paper publication printed on a daily or some other frequent basis and contains news and other information useful to its consumers.[5] As noted above, Company characterizes its publication as a newspaper. The publication is formatted in columns, typical of newspapers, and contains news, editorials, and advertisements. It is printed and published daily, which is also typical of newspapers. Although the issue is not particularly clear, we rule that Company's paper publication is a newspaper and, because it is published daily, is a qualified legal publication. Therefore, this publication is not tangible personal property and its sale is not subject to sales or use taxes.

The second issue, and the question posed in the request for ruling, is whether the online version of the publication also qualifies as a newspaper. We note that the statutory definition of a "legal publication" refers to a publication that is "printed." The

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1 Statutes can be viewed at www.Colorado.gov/revenue/tax > Tax Library > Statutes

2 "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., reprinted newspaper supplements..." § 39-26-102(15), C.R.S.

3 Section § 24-70-102, C.R.S.

4 The characterization is important because, for example, magazines are not excluded from the definition of tangible personal property and are subject to sales and use taxes.

5 The Merriam-Webster dictionary defines a newspaper as "a paper that is printed and distributed usually daily or weekly and that contains news, articles of opinion, features, and advertising." The dictionary defines "magazine" as, "(a) a periodical containing miscellaneous pieces (as articles, stories, poems) and often illustrated; also : such a periodical published online, (b) : a similar section of a newspaper usually appearing on Sunday." The distinction between newspaper and magazine is, to say the least, subtle.

online version of the publication is not printed, but it is the duplicate of a printed newspaper. We also note that the legislature could not have contemplated online newspapers when, in 1943, it enacted the exclusion of newspapers from the definition of tangible personal property. However, we do not view the term "printed" as a substantive term of this statute. The gravamen of the "legal publication" requirement is the frequency in which the newspaper is published, not how often it is printed. As to the issue of the legislative purpose or intent at the time of this exclusion, it is not clear why the legislature excluded newspapers. It may have been to avoid difficulties related to collecting a penny or two on each sale, particularly when sold at coin-operated newspapers stands – a problem not faced by Company's subscription fee for its online version. In any event, we are persuaded that the online version is a newspaper because it is a duplicate of the paper version.[6]

Therefore, we conclude that the online publication is not tangible personal property and is not subject to state and state-administered local sales and use taxes.

Stock Screens and Comparative Performance

Company requests a ruling whether the subscription fee for its stock screens, comparative performance information, and other similar information are subject to sales tax. The principal question presented here is whether the transaction is the sale of tangible personal property or a non-taxable service.[7] The Department uses the "true object" test to measure whether a transaction is a non-taxable service or a sale of tangible personal property. In *City of Boulder v Leanin' Tree, 72 P.3rd 361 (Colo. 2003)*, the Colorado Supreme Court, after discussing the "true object" test, as well as others, concluded that the most appropriate question to ask is whether the transaction is one which is commonly understood to be for tangible personal property or a service. See, also, Hellerstein & Hellerstein, State Taxation, ¶13.03[2][a]. This is a particularly difficult issue when discussing transactions for the access to information.[8]

On the one hand, we have previously concluded, as have most other states, that market survey publications made available for general consumption, such as a Kelley Blue Book on car prices, and not made to order for one customer or one group of customers, are tangible personal property and not the sale of a service.[9] These publications consist primarily of data but can include some analysis of the data.

Company's online product is similar in that it provides access to a variety of financial data and analysis, such as identifying emerging stocks. On the other hand, the online products are not static as is commonly found in at least the paper version of taxable publications. Subscribers to Company's online products have the ability to query the

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[6] We purposefully have not addressed the issue of whether Company's online publication is tangible personal property. We have held in other contexts that the digital goods such as music, videos, and books downloaded to a customer's computer or other device is tangible personal property.

[7] Colorado generally does not impose sales tax on services, although inseparable services or services bundled with the sale of taxable goods can be subject to tax. 39-26-104, C.R.S.

[8] As Hellerstein notes, it is extremely difficult to create a consist theory in this area. Hellerstein, ¶15.11.

[9] Colorado General Information Letter No. GIL-07-27,12/04/2007

databases using its computer software and create quasi-customized reports based on search and filter functionally options. Customers also have access to real time data. The interactive nature of this system, as well as the real-time information provided, is more suggestive of a service than they are of the sale of a product.

The issue here would be easier to resolve had the information services been made available by an investment company. Investment companies, through which clients can buy and sell financial investments, are clearly providers of services. Information services, such as those provided here, would likely be viewed as a service, primarily because such information services are generally incidental to the investments services. In this case, however, the information services are not offered in conjunction with other clearly service oriented transactions.

A number of states have directly addressed transactions for acquiring information by enacting sales tax legislation on "information services."[10] We think this is a particularly apt description of these online systems because of the interactive and real time characteristics of the product.

Therefore, we conclude that the true object of the stock screens, comparative performance ratings, and emerging stock services are the provisioning of a service, and, thus, not subject to state sales or use 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/revenue/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. This ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

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

[10] Ohio Rev. Code § 5739.01(B)(3)(e), (Ohio defines a taxable sale to include automatic data processing, computer services, or electronic information services.); NY Tax Law §§ 1105(c)(1), 1105(c)(9), (New York distinguishes between taxable information services and the provision of information that is "personal or individual" in nature.)

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,

Neil L. Tillquist
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