

# STATE OF COLORADO



DEPARTMENT OF REVENUE  
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GIL-14-001

January 14, 2014

XXXXXXXXXXXXXXXXXX  
ATTN: XXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Re: Promotional Videos

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXX ("Company") a request for guidance to determine whether promotional videos for businesses and the rights to such videos and, at times, project files, raw footage, and other related materials are subject to Colorado sales or use tax.

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](http://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

1. Are promotional videos for businesses and the rights to such videos subject to Colorado sales and use taxes?
2. Are project files, raw footage, and other related materials subject to Colorado sales or use tax?

## Background

Company is a video production company that primarily produces promotional videos for small and medium sized businesses. Most of Company's transactions involve Company shooting video footage that Company edits into a finished product that is, in most cases, electronically delivered to clients. In some situations Company delivers the video on a DVD or thumb drive. Clients have the right to use, duplicate, and sell the finished product.

In other transactions, Company delivers not only the finished product but also the raw footage and project files on a physical hard drive to the client. This allows the client to create alternative versions of the video or edit additional clips using portions of the raw footage used and unused in the finished product. Company separately charges a fee, typically forty percent of the project's total cost, for the option to own rights to raw footage and the delivery of raw footage and project files on a hard drive.

Lastly, Company will also shoot footage that requires less editing and this is done for training purposes. There may be a small amount of editing and cleanup performed for such videos. In these cases, Company digitally sends the raw footage to the client.

## Discussion

Colorado levies sales tax on the sale, use, or rental of tangible personal property, but not on the sale of services.<sup>1</sup> When a transaction involves both a service and a transfer of tangible personal property and the price for the service is not separately stated from the price of the property, then the Department will, if the sale cannot be disaggregated into two separate transactions because they are inseparably bundled, look to the "true object" of the transaction to determine whether it is a taxable sale of property or a non-taxable sales of services.

In Department Special Rule 40 "Service Enterprises",<sup>2</sup> the Department states that the "true object" of a transaction for the production of a video (film) is a non-taxable sale of services, even though some property (celluloid) is transferred from seller to buyer.

In *City of Boulder v. Leanin' Tree*, 72 P3d 361 (Colo. 2003), the Colorado Supreme Court considered a case in which artists provided a company images for the company's use in producing greeting cards. The artists granted the company a license to use the images and the images were returned to the artists after the company made use of the images. The Court concluded that the true object of the transaction was the provisioning of a non-taxable service rather than a taxable sale of the images. In making its determination, the Court reviewed a variety of tests, including the "true object" test, used by states to make this distinction and concluded that,

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<sup>1</sup> §39-26-104(1)(a), C.R.S. You can view statutes on the Department's web site at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > Statutes.

<sup>2</sup> Special Rule 40, "Service Enterprises", which can be viewed at [www.Colorado.gov/revenue/tax](http://www.Colorado.gov/revenue/tax) > Tax Library > Rules and Regulations > Final Regulations > Sales and Use Tax.

Varied as these analyses may be, they largely share in common some attempt to identify characteristics of the transaction at issue that make it either more analogous to what is reasonably and commonly understood to be a sale of goods, or more analogous to what is generally understood to be the purchase of a service or intangible right.

The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is determining whether the real object sought by the buyer is the service or the tangible personal property. If the "true object" of the transaction is the service, which is not subject to tax even though some tangible personal property is transferred, then the entire transaction is not subject to tax.

The video production you describe appears to be similar to the film example in the Service Enterprise special rule.<sup>3</sup> Filming and film-editing are generally considered to be the provisioning of services. The value of the property transferred to the client in most video productions appears to be relatively insignificant in relation to the services performed. Moreover, and consistent with *Leanin' Tree*, a transaction for the creation of a film for a specific buyer is commonly viewed as a contract for the service of filming. Finally, this characterization of the transaction is consistent with other transactions where the service component is predominant and the service is rendered to a single, specific person. For example, a compilation of data, such as a market survey report, prepared for a single customer, is generally treated as a service, even though the seller may provide tangible personal property in the form of a report to the client.<sup>4</sup> It is unclear what intangible rights (e.g., copyrights) are granted as part of the transactions you describe, but for a discussion of the transfer of such rights, see *Leanin' Tree* and *American Multi-cinema v. City of Westminster*, 910 P.2d. 64 (Colo. 1994).

We note that Company charges for the raw footage and project file and this charge can be forty percent of the total cost. We assume that this price reflects the value of the services to produce the raw video and not the value of the property (i.e., the property consisting of the hard drive and project files). If correct, this charge would also likely be viewed as a service.

If Company is engaged in the business of rendering a service, Company is the consumer, not the retailer, of the tangible personal property used to provide that service, including property it transfers to the client, such as the hard drives, thumb drives, or DVDs. Assuming Company is providing a service, Company must pay sales

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<sup>3</sup> The question of whether the true object of a transaction is a sale of a service or taxable goods is a difficult issue where it is difficult to achieve consistency. See Hellerstein, *State Taxation* (WG&L), sec.12.08(2)(a), citing *Qwest Dex* 109 P.3rd 118 (AZ 2005). For example, while the filming of a video may be commonly understood as a sale of service, the Department would not view a sale of a custom portrait or sculpture by an artist as a non-taxable sale of a service.

<sup>4</sup> Colorado General Information Letter GIL-07-027, 12/04/2007. You can view this ruling at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > Rulings > Topic by Number. However, a subsequent sale of such report by the client to third parties (or the sale of a film by the client to third parties), would likely be viewed as a taxable sale of property because the service component was performed by the initial seller, not the client.

tax on such property when it acquires it for use. If Company does not pay sales tax on these purchases (for example, the property is purchased outside Colorado), Company must pay consumers use tax to the Department on such items.

### **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/revenue/tax](http://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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Colorado Department of Revenue  
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Email: [neil.tillquist@state.co.us](mailto:neil.tillquist@state.co.us)