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Company provides several services that respond to specific customer needs, such as a hotline that provides immediate contact with XXXXXXXXXXXXXXXXXXXXXXXX to report a XXXXXXXXXXXX or plant accident. Company also prepares all the necessary XXXXXXXXXXXX XXXXXXXXXXXX and XXXXXXXX required to transport XXXXXXXX. Company does not engage a transportation company on behalf of their client. Company provides these services through the use of web application.

There are no servers or offices located in Colorado, but Company has an employee that works and resides in Colorado, and assists in the solicitation of the product.

Company represents that there is no transfer of tangible personal property to clients and is not downloading software to clients.

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. If you would like a specific ruling on the issues you raise, you can request a private letter ruling by submitting a request and fee in compliance with Department Regulation 24-35-103.5.

Colorado levies sales tax on the sale, use or rental of tangible personal property, but not on the sale of services.¹ Tangible personal property is corporeal property, which is property that is part of the physical world. The Department, as well as the majority of other states, treats digital goods, such as digital books as tangible personal property because these goods are not merely conceptual in nature. Thus, a book or reference material may constitute a digital good, even if electronically delivered to the customer.

Even though a digital product, such as the MSDS, is tangible personal property, the transaction may, nevertheless, be treated as a non-taxable service if the "true object" of the transaction is the provisioning of a service. For example, custom-made compilations of data, such as a market survey report prepared for a single customer, are generally treated as a service, even though the seller may provide tangible personal property in the form of a report to the client.² On the other hand, if the same report is sold to multiple customers, then providing such reports will generally not be treated as a service and will be treated as a taxable sale of tangible personal property.

The Department cannot determine in the context of a general information letter whether the MSDS and other charges are taxable. There are a number of factors that suggest Company is providing a service. Company represents that the principal reason clients engage Company is to ensure compliance with government reporting, permitting, and

¹ §39-26-104(1)(a), C.R.S. You can view statutes on the Department's web site at www.colorado.gov/revenue/tax > tax library > statutes.

² Colorado General Information Letter GIL-07-027,12/04/2007. You can view this ruling at www.colorado.gov/revenue/tax > Tax Library > Rulings> Topic by Number.

other regulatory requirements. Our inclination is to treat transactions to create reports and completed applications for governmental regulatory compliance activities as services. However, we have not reviewed the governmental reporting and application process to have a sense of whether this is a perfunctory process or something approaching a service. Company represents that it may also engage in some analysis of the use of XXXXXXXXXX in the client's enterprise. This analysis may involve sending Company employees to the client's facilities. However, it is not clear when and under what circumstances this analysis is done. If clients engage Company primarily to obtain access to data, without any significant analysis of the data by Company, we would be more inclined to treat the MSDS as a taxable digital product, much like a reference manual. Finally, the pricing structure (e.g., whether and how various activities or products are priced) can influence how the transaction is characterized (e.g., hourly rates are indicative of a service; separately priced labor and product charges suggest a sale of services and of goods, etc.).

Operating a call center is generally considered a service. Company's description of its hotline suggests that it is similar to a call center. Company's hotline allows clients to contact Company to report an emergency and, importantly, initiates the process within the Company to prepare and issue the necessary reporting and other regulatory compliance activities. Again, we generally view reporting and application activities as services, even though some tangible personal property may be generated from such activities. Although we make no determination here, we understand that Company, itself, is not providing any of the intrastate telecommunications services and is not a reseller of such.

Finally, Company performs a variety of activities relating to governmental reporting, permitting, and other regulatory activities that are necessary for the transportation of XXXXXXXXXX. Company, itself, does not engage in the hiring of transportation companies; such engagements are left to the client to procure. Company's activities here appear to be more accurately described as services than as the sale of tangible personal property (e.g. completed applications for governmental permits). Even if Company did engage the transportation companies, transportation services are presumptively non-taxable service.³

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-

³ See Department Special Regulation 18 (Transportation Services). You can view this document on the Department's web site at www.Colorado.gov/revenue/tax > Tax Library> Regulations> Final Regulations > Sales Tax

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,

Office of Tax Policy
Colorado Department of Revenue