



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL-14-008

April 28, 2014

XXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Membership Fees

Dear XXXXXXXXXXXX,

You submitted on behalf of your client ("Association") a request for guidance to determine the applicability of sale or use tax on membership fees.

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 Rule 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 Department Rule 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 membership fees subject to Colorado sales or use tax?
2. If membership fees are taxable, is the entire charge taxable or only a portion thereof?
3. If membership fees are taxable and the member cancels before the end of the membership period, and a prorated refund is issued by Association to the member, is the refunded amount subject to a refund of sale or use tax? If so, what is the basis for the refund?

Background

Association is an association for instructors and trainers of the recreational sport and entertainment

industry. Association exists to promote the sport, bring awareness to environmental causes, and sell Association sporting merchandise related to the sport.

Association offers membership to Association for an annual membership fee. The annual membership fee costs fifty to two hundred fifty dollars, depending on the level of involvement with Association the member maintains, i.e., whether the member is an instructor, a retail store or a resort.¹ The membership fee covers the remainder of the current year and the entire following calendar year, and is subject to annual renewal.

In exchange for payment of this fee, the member is entitled to receive the following benefits:

- An instructor's guidebook;
- Right to display and use Association's marketing material;
- Access to purchase sport merchandise associated with Association for resale;
- Option to become certified in the recreational sport;
- One-year subscription to a sport industry magazine (published by Association);

Discussion

Colorado levies sales tax on the sale or use of tangible personal property, but not on the sale of services.² In order to incur a sales tax liability, there must be a "sale" at retail. A "sale," for sales and use tax purposes, requires (1) a transaction and (2) a taxable event. Department Rule 39-26-102(10) defines a sale as:

... any transaction, except as provided in 26-102.7(b), whereby a person, in exchange for any consideration ... transfers or agrees to transfer all or part of his interest ... in any tangible personal property to any other person; ... Whether the transaction is absolute or conditional, it shall be considered a sale if it transfers from a seller to a buyer the ownership or possession of tangible personal property or specified services.

In the case at hand, Association provides members an instructor's guidebook and a one-year subscription to a sport industry magazine published by Association. Members are also given marketing material that members can display and use. These items are tangible personal property that the Association transfers to the members in exchange for payment of the membership fee. The membership charge appears to meet all the requirements of a taxable sale.³

However, the membership fee is also consideration for the right to purchase sport merchandise associated with Association for resale and the option to become certified in the recreational sport. The Department would likely view the former as an intangible or as an exempt wholesale

¹ Association has not indicated whether the higher price for membership includes additional materials or services. Such effect could be relevant for any determination.

² §§39-26-104(1)(a), and 202 C.R.S. You can view statutes on the Department's website at www.colorado.gov/revenue/tax >Tax Library > Statutes.

³ There are a many types of membership fees and some may not be subject to tax. For example, a membership fee that allows access to a retailer's store but payment of the fee does not transfer property to the member may not be subject to tax. See, e.g., Massachusetts Letter Ruling 02-8 (2002) (membership fee to at access retailer's store is not subject to tax, but membership fee that transfers a certain number or unlimited video rentals is taxable); *New York Advisory Opinion TSB-A-92(66)S, 09/17/1992*; *Nutz and Boltz, Inc., v. Comptroller*, see *ReveNews Vol. 21, No. 2, Spring 2000* (membership fee taxable because dominant purpose of fee was provision of magazines, although some services provided); Texas Comptroller's Decision, No. 22,613, 03/02/1988 (membership fee allocated only because price for taxable items readily determinable);

transaction and the latter as either a service or an intangible, none of which are subject to sales tax.

When a transaction consists of both taxable property and non-taxable services or non-taxable intangible property, the Department will generally treat the entire transaction as nontaxable if the true object of the transaction is the acquisition of services (or intangibles) and the value of the tangible personal property is inconsequential.⁴ However, we cannot determine, in the context of a general information letter, whether the tangible personal property is inconsequential.

Refund of Membership Fee

Association allows members to cancel their membership before the end of the membership period. When this occurs, Association provides a prorated refund issued to the member. Sales tax is a transactional tax and events subsequent to the taxable event generally do not affect the tax liability created at the time of sale.⁵ However, Colorado law allows a tax refund if the retailer gives a full refund of the purchase price.⁶ A partial refund of the purchase price presumably means that the buyer has used the property to some extent and therefore no refund of tax is allowed. However, if the refund is for property that has not been used, such as in the case of a canceled magazine subscription and the refund reflects the magazines not yet delivered, then a refund of tax for the partial refund of the purchase price is permitted. A partial refund of the tax may be allowed if the handbook was of inconsequential value and the marketing material was unused.

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 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

⁴ *AD Stores v. Department of Revenue*, 19 P3d 680 (Colo. 2001).

⁵ See, e.g., General Information Letter 07-033. You can view this GIL, statutes, and other Department publications by going to www.Colorado.gov/revenue/tax > Tax Library.

⁶ See, §39-26-102(5), C.R.S.