COLORADO
Department of Revenue
Taxation Division

Office of Tax Policy
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PLR 24-007

July 2, 2024

XXXXXXXXXXXX
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Via Electronic Mail: XXXXXXXXXXXX

Re: Ancestry and Health History Reports

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX ("Company"), to the Colorado Department of Revenue ("Department") pursuant to 1 CCR 201-1, Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Whether Company's sale of ancestral and health reports and the saliva kits used to collect customer's DNA for generating these reports are subject to sales tax in Colorado.
2. Whether Company's use of saliva kits to collect customer's DNA for generating ancestral and health reports is subject to use tax in Colorado.

Conclusions

1. No, Company's ancestral and health reports and saliva kits are not subject to sales tax in Colorado.
2. Yes, Company's use of saliva kits to collect customer's DNA for generating ancestral and health reports are subject to use tax in Colorado.

Background[1]

Company is an online provider of ancestral and health history reports for individual customers, who are located all over the United States and abroad. The reports are generated from Company's analysis of the customers' DNA using saliva specimens. Customers purchase an ancestry test from Company's website, then collect their own saliva using the saliva kit that is mailed to them by the company from a distribution center located in XXXXXXXXXX. Company pays use tax on the saliva kits to the state of XXXXXXXXXX when they are shipped to customers. Once the customer has collected the saliva sample, the customer

[1] Paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5 requires the request for a private letter ruling to include a statement of facts. This section generally recites the statement of facts provided in the initial request or in any supplement or amendment thereto, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be redacted or omitted to ensure confidentiality as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

mails the kit from their home to a Company-owned lab in XXXXXXXXXX, where the DNA specimens are processed. The customers then access their individualized, personal reports through Company's website.

Discussion

Colorado imposes a sales tax on retail sales of tangible personal property and those services specifically included in the statute.[2] Excluded services may be subject to sales tax if they are provided as part of a mixed transaction involving the sale of tangible personal property.[3] When a vendor transfers tangible personal property to a customer as part of services performed by the vendor for the customer, the application of sales tax will depend on whether the sale of property and services are separable.[4] If they are not separable, the sale is evaluated to determine whether the customer's "true object" is to acquire the tangible property, in which case the transaction is subject to tax, or to receive the service.[5] In the latter case, the transaction is a non-taxable service even though some tangible personal property is incidentally transferred in the performance of the service.[6]

Colorado imposes a use tax for the privilege of storing, using, or consuming tangible personal property within the state.[7] Use is sufficient for the imposition of the tax whenever the property is actually used or made available for use after the purchaser (or the purchaser's designee) takes possession of the property, even if such use is temporary.[8] When a person pays sales or use tax on tangible personal property in an amount equal to or in excess of that imposed in Colorado in another state, the person is granted a credit against the use tax imposed in Colorado.[9] The amount of the credit is equal to the tax paid by the person to another state not to exceed the amount due in Colorado.[10]

DNA analysis for ancestral and health history is not among the services explicitly subject to tax in Colorado. To conduct DNA analysis, Company sends saliva kits to customers to self-collect their DNA via saliva. These saliva kits are tangible personal property used in the DNA analysis service and are integral to and thus inseparable from the service. Because they are inseparably mixed, the taxability of the entire transaction depends on the true object of the transaction. Based on the information provided, the true object of the customer is the service—that is, the DNA analysis that results in ancestral and health history reports—and not the tangible personal property of the saliva kit. Because the service and the tangible personal property are inseparable, and the true object of the customer is the service, neither Company's ancestry and health history reports nor the saliva kits used in the analysis are subject to sales tax in Colorado.

While Company's saliva kits are not subject to sales tax, they are subject to use tax. Company, as a service provider, is the user of the property.[11] Company pays use tax to the state of XXXXXXXXXX when the saliva kits are shipped to purchasers. Company may credit the use tax already paid to XXXXXXXXXX toward the use tax owed in Colorado.[12] Credits for tax paid in another state are applied first to state-level use tax owed and then to any subdivision, such as a special district, that imposes a use tax.[13] If the use tax paid to XXXXXXXXXX is less than that owed to Colorado, Company would owe additional use tax to Colorado. If the use tax paid to XXXXXXXXXX is equal to or more than that owed to Colorado, Company would not owe use tax to the state but may still owe use tax to a subdivision.

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[2] Section 39-26-104(1)(a), C.R.S. *See A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 19 P.3d 680, 683 (Colo. 2001).
[3] *A.D. Store,* 19 P.3d at 683–84.
[4] *Id.*
[5] 1 CCR 201-5, Special Regulation 40.
[6] *Id.*
[7] Section 39-26-202(1)(a), C.R.S.
[8] Paragraph (3) of 1 CCR 201–4, Rule 39-26-202.
[9] Section 39-26-713(2)(f), C.R.S.; 1 CCR 201–4, Rule 39-26-713–2.
[10] *Id.*
[11] 1 CCR 201-5, Special Rule 40.
[12] Section 39-26-713(2)(f), C.R.S.; 1 CCR 201–4, Rule 39-26-713–2.
[13] 1 CCR 201–4, Rule 39-26-713–4.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts, that all representations are true and complete, and that Company has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Company's facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department, and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at Tax.Colorado.gov for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.