

Rulings of the Tax Commissioner

Document Number: 13-236
Tax Type: Communications Sales and Use Tax; Retail Sales and Use Tax
Brief Description: Seller of gaming-related items - video game console points cards, video game online memberships, and online points cards
Topics: Communications Sales and Use Tax; Taxable Transactions
Date Issued: 12/19/2013

December 19, 2013

Re: Request for Ruling: Retail Sales and Use Tax

Dear *****:

This is in response to your letter submitted on behalf of ***** (the "Taxpayer") in which you request a ruling on the application of the retail sales and use tax and the communications sales and use tax to sales of video game console points cards, video game console memberships, and online points cards.

FACTS

The Taxpayer currently sells three different types of gaming-related items - video game console points cards, video game online memberships, and online points cards. The video game console points cards are used online to rent high-definition movies, to buy television shows, to download arcade and full video games, and to keep games updated with new map packs, songs and workouts. The video game console memberships are used online to play games online, to watch high-definition movies and television shows, to watch current season television shows, to watch live and on-demand sports events, to chat with friends, to use social media and to listen to music. Finally, the online points cards are used online for multiplayer online games. The items at issue are sold both in the Taxpayer's retail locations and on the Taxpayer's website.

The Taxpayer requests a ruling request regarding the application of the retail sales and use tax and the communications sales and use tax to sales of these items to its customers.

RULING

Retail Sales and Use Tax

Virginia Code § 58.1-603 imposes the retail sales and use tax on the gross sales price of tangible personal property when sold at retail or distributed in Virginia. The tax also applies to services made in connection with the sale of tangible personal property and to certain enumerated services. The term "sale" is defined in *Va. Code* § 58.1-602 as:

Any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration

Virginia Code § 58.1-602 defines tangible personal property as:

Personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

In this instance, the Taxpayer's customers purchase the points cards and memberships to gain access to amenities offered online. The points cards and memberships serve as mediums for securing access to those amenities. The sale of these items does not constitute the sale of tangible personal property as considered in the aforementioned authorities. Accordingly, the sales of these items are not subject to the retail sales and use tax.

Communications Sales and Use Tax

Virginia Code § 58.1-647 defines communications services as:

The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; and (vi) directory assistance.

In this instance, the items at issue do not constitute communications services as defined in *Va. Code* § 58.1-647. Accordingly, sales of these items are not subject to the communications sales and use tax.

This response is based on the facts provided as summarized above. Any change in facts or the introduction of new facts may lead to a different result.

The *Code of Virginia* sections cited are available on-line at www.tax.virginia.gov in the Laws, Rules and Decisions section of the Department's web site. If you have any

questions about this response, you may contact ***** in the Department's Office of Tax Policy, Appeals and Rulings, at

***** .

Sincerely,

Craig M. Burns
Tax Commissioner

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