District Court, City and County of Denver, Colorado 1437 Bannock Street Denver, CO 80202	DATE FILED: April 26, 2017 2:01 PM CASE NUMBER: 2016CV34048
Plaintiff: TRAVELPORT INC. v. **Defendants:** DEPARTMENT OF REVENUE OF THE STATE OF COLORADO; and BARBARA BROHL, in her official capacity as Executive Director of the Department of Revenue of the State of Colorado.	**▲ COURT USE ONLY ▲** Case Number: 16CV34048 Courtroom: 209

ORDER RE: MOTION FOR DETERMINATION OF LAW

This Matter comes before the Court pursuant to the Department's Motion for Determination of Law; Travelport's Response; and the Department's Reply. The only issue raised by these motions is the meaning of the term "rendered" as it applies to the Colorado tax code's requirement that taxable income includes "services rendered in Colorado." The Department argues this term means services *performed* in Colorado, while Travelport argues this term means services *delivered* in Colorado.

I. Standard of Review

At any time after the last required pleading, a party may move the court to make a determination of a question of law. C.R.C.P. §56(h). An order determining a question of law may be entered when there is no genuine issue of any material fact necessary to make the determination. *Id.* When considering whether or not a genuine issue of material fact exists, the

nonmoving party is entitled to all inferences that may reasonably be drawn from the undisputed facts, and the court must resolve any doubts in the nonmoving party's favor. *Henissey v. First Transit, Inc.*, 220 P.3d 980, 985 (Colo. App. 2009). The purpose of C.R.C.P. §56(h) is:

> to allow the court to address issues of law which are not dispositive of a claim (thus warranting summary judgment) but which nonetheless will have a significant impact upon the manner in which the litigation proceeds. [Resolving such issues] will enhance the ability of the parties to prepare for and realistically evaluate their cases ... and allow the parties and the court to eliminate significant uncertainties on the basis of briefs and argument, and to do so at a time when the determination is thought to be desirable by the parties.

Bd. of Cnty. Comm'rs v. United States, 891 P.2d 952, 963 n. 14 (Colo.1995) (*quoting 5 Robert Hardaway & Sheila Hyatt*, Colorado Civil Rules Annotated § 56.9 (1985)); *Coffman v. Williamson*, 348 P.3d 929, 934 (Colo. 2015).

II. Background Facts

This matter involves travel reservation services, provided by Travelport[1], to travel agents and subscribers around the globe during the tax years 1997 through 2001. Travelport, on behalf of travel vendors, distributed information on the availability of flights, hotels, rental cars, and similar travel services to subscribers around the world. Whenever a subscriber made a reservation for one of these services, Travelport received a booking fee. The main issue in this case is the proper sourcing for these booking fees for the purposes of Colorado taxation. Specifically, the issue is whether these booking fees are subject to Colorado income tax as "services rendered in Colorado." Section 39-22-303(4)(d).

[1] At the relevant time at issue Travelport was Galileo International, Inc., Travelports predecessor. For clarity, I will simply refer throughout this Order to Travelport in lieu of Galileo as this distinction is immaterial for purposes of this Order.

Travelport, unsure of what "services rendered" meant within the meaning of the tax code, made several efforts to obtain clarification from the Department about how "revenue from services rendered in Colorado" should be interpreted.[2] This included contacting the Department directly to seek guidance, then engaging legal counsel to inquire. Counsel set up a meeting with a Tax Conferee (Mr. Speckman) with the Department who presented an alternate sourcing approach which he believed the Department would endorse. This approach allowed Plaintiff,

> [T]o exclude from its receipts factor numerator two types of booking fee revenue: (1) booking fees arising from reservations made by travel agents located outside the United States; and (2) booking fees sourced by [Plaintiff] to another state by inclusion of the fee in the receipts factor numerator of a return filed in such state.

This oral understanding was later confirmed as the position of the Department by Mr. Speckman in a letter dated October of 2001. In 2006, the Department commenced an audit of Travelport for the years at issue. The only disputed issue in this audit was Travelport's computation of its revenue factor. Thus, the statutory language at issue here is determinative on that issue. After the auditor was given the letter referenced above, the auditor told Travelport that Mr. Speckman did not have the authority to write such a letter on the Department's behalf and this letter would not be honored.

III. Analysis

The relevant inquiry for this Court is the meaning of the terms "services rendered in Colorado" as applied to the tax code. This is a question of statutory interpretation, which involves firstly an inquiry into the plain and ordinary meaning of the words. Clearly, there is ambiguity in how "rendered" is defined in the context of the statute as the Department argues

[2] During the relevant time period, the Department did not issue any guidance in the form of regulations, rules, or rulings that would give Travelport guidance in interpreting the tax code.

this means performed and Travelport argues this means delivered, and both definitions find support in the dictionary. In light of this ambiguity, I must consider other methods of statutory interpretation, including and legislative intent, in defining an ambiguous term.

The Court finds it illustrative that during the time periods at issue there was no definition of "services rendered in Colorado" in the tax code. Nor did the Department issue any guidance in the form of regulations, rulings, or bulletins. I agree with the Plaintiff, that because the Department did not issue any guidance during the relevant time period, I cannot afford any greater weight to the Department's interpretation of the tax code, and I must "construe all doubts regarding interpretation of language in a tax statute in favor of the taxpayer." *BP Am. Prod. Co. v. Colorado Dep't of Revenue*, 2016 CO 23, ¶ 16, 369 P.3d 281; *See also* §C.R.S. 39-23-310.

Further, Plaintiff exercised due diligence in attempting to ascertain the meaning of "services rendered" evidenced by the relevant facts outlined in the complaint. In fact, the Department issued a letter to Plaintiff explaining the ambiguity and the Plaintiff relied upon that explanation to its detriment. However, the Defendant now wants me to rule against the Plaintiff and against the Departments interpretation memorialized in writing to find in favor of the Department. I cannot find this result on the facts before me. Because the Department issued no guidance during the relevant time periods, the deference given to the taxpayer in issues of interpretation of a tax statute, and the Department's own letter to Plaintiff all support a ruling in favor of the Plaintiff. Therefore, the Defendant's Motion for Determination of Law that "services rendered" in C.R.S. § 39-22-303(4)(d)(II) means "services performed" is DENIED.

So Ordered.

Date: April 26, 2017

Jay S. Grant

District Court Judge