

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>Court Address: 1437 Bannock Street Denver, Colorado 80202</p> <hr/> <p>Plaintiff Hunter & Geist, Inc., a Colorado Corporation</p> <p>v.</p> <p>Defendants City and County of Denver; and Cheryl Cohen-Vader, in her official capacity as the Manager of Revenue of the City and County of Denver</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 05CV2858</p> <p>Courtroom: 7</p>
<p>ORDER</p>	

This matter is before the Court on Plaintiff’s Motion for Declaratory Judgment. Upon consideration of the opening brief and answer brief, and having reviewed the Court’s file and applicable authorities and being sufficiently advised in the premises, the Court finds and orders as follows.

The Plaintiff, through undersigned counsel, moves pursuant to Rule 57 of the Colorado Rules of Civil Procedure, for a declaratory judgment. District Courts have the power “to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” COLO. R. CIV. PRO. 57 (2006). “The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force of a final judgment or decree.” *Id.* This Court may hear a declaratory judgment action if: 1) the matter is a currently existing legal controversy; 2) the declaratory judgment will resolve the controversy as to all parties with a substantial interest in the matter; and 3) the declaratory judgment is independent of and separable from the underlying action. *Brill v. Hughes*, 958 P.2d 529 (Colo. App. 1998).

The issue in this case is whether the Plaintiff’s sale of legal transcripts to third parties is a sale of tangible personal property. The question is whether “the true object sought by the buyer is the service per se” or the tangible good. *City of Boulder v. Leanin’ Tree, Inc.*, 72 P.3d 361, 363 (Colo. 2003) (quoting Special Industry Regulation, SR-31(2)). “All doubts will be construed against the government and in favor of the taxpayer.” *Leanin’ Tree, Inc.*, 72 P.3d at 367 (quoting *Transponder Corp. v. Prop. Tax Admin.*, 681 P.2d 499, 504 (Colo. 1984)). The Colorado Supreme Court noted that the “transfer to a publisher of an original manuscript by the author for the purpose of publication is not subject to taxation.” *Leanin’ Tree, Inc.*, 72 P.3d at 363.

However, a “tax would apply to the sale of mere copies of an author’s works” when “the manuscript itself is of a particular value as an item of tangible personal property.” *Id.*

The Plaintiff produces written transcripts at the request of parties involved in legal proceedings. When the Plaintiff sells a transcript to an unrelated third party, the unrelated third party does not seek the Plaintiff’s service in providing legal transcripts, but seeks the transcript itself as tangible personal property. Interested parties hire the Plaintiff to perform a service, and unrelated third parties purchase the tangible property produced by that service. Therefore, the Court rules that transcripts sold to unrelated third parties are tangible personal property.

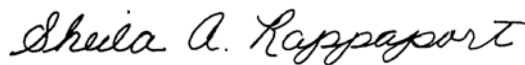
The second issue is whether video and audio taped proceedings are tangible personal property. The Colorado Supreme Court has enumerated several factors this Court must consider in deciding whether video and audio tapes are tangible property. These include:

- 1) A comparison of “the value of the tangible property with that of the intangible property or service”;
- 2) “Whether there is an alternative method of transfer”;
- 3) “The length of time the information provided retains its value”;
- 4) “Constraints on the buyer’s ability to use the tangible property”;
- 5) “What is done with the tangible property after it has yielded the intangible component”;
- 6) “Whether the tangible property represents the finished product sought by the buyer.”

Leanin’ Tree, Inc., 72 P.3d at 365-66.

Here, the video or audio tapes are valuable as a service, not as a tangible good because parties seek the Plaintiff’s service to provide video or audio tapes of legal proceedings. The alternative transfer methods for video or audio tapes are a typed nontaxable written transcript produced by the Plaintiff. The video or audio tapes only retain value for a limited time as legal proceedings are relevant. The video or audio tapes have limited use apart from the service provided to legal professionals. After the video or audio tapes are no longer relevant for legal purposes, parties file or destroy the tapes because they have little or no useful value. The video or audio tapes represent the service provided by the Plaintiff and not the finished product sought by the buyer. Therefore, the Court rules that video or audio tapes produced by the Plaintiff at the request of related parties to a legal proceeding are not tangible goods, but rather nontaxable services.

DONE this 2nd day of October 2006



Judge Sheila A. Rappaport
District Court Judge