

May 18, 2007

<name>
<company>
<address.
<city, state zip>

Formal Ruling 2007-03

Dear <name>:

You have requested a formal ruling on behalf of <company> whether sales and use tax should be collected and remitted for use of the <device>, a machine <company> intends to place in its retail stores within the state.

<Company> is primarily in the business of operating retail <type> stores. <Company> intends to train store personnel to operate the <device>, an inkjet cartridge refilling machine. Rather than purchasing new inkjet cartridges, customers provide <company> with their used cartridges to be refilled with ink. In addition to refilling, the <device> reconditions the cartridge; the machine pretests for electrical malfunctions, evacuates old ink, flushes and cleans the printhead, and performs a print test.

Vermont imposes a sales tax on the sales price of tangible personal property sold at retail in this state. 32 V.S.A. § 9771(1). “Tangible personal property” is “personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses.” 32 V.S.A. § 9701(7).

Based on the facts you have provided, the <device> restores inkjet cartridges by cleaning and reconditioning the cartridge, and by replacing a principal component part – the ink. The process constitutes a repair because the cartridge is restored to or near its original condition or usefulness without producing new parts. The ink used in the repair constitutes tangible personal property sold at retail in this state and is thus subject to the tax. 32 V.S.A. § 9771 (1).

As a general rule, the labor or service charge for a repair is not taxable when separately stated. If a single sales price is charged for the tangible personal property and labor, however (which is likely the case here), the transaction constitutes a “bundled transaction.” A bundled transaction is one in which two or more products that are otherwise distinct and identifiable are sold for one non-itemized price. Vt. Sales and Use Tax Regulation (Reg.) §1.97801(4)-3. As a bundled transaction, sales tax should be

collected on the entire sales price if any product in the transaction would be taxable if sold separately. *Id.* If the sales price or purchase price of the taxable product is ten percent or less of the total purchase price or sales price of the bundled products, (which is unlikely here), the charge for the taxable item is considered de minimis and the entire transaction is not taxable. *Id.*

Use of the <device> does not qualify for a manufacturing or other exemption, as you suggest in your letter. Under the manufacturing exemption, tangible personal property may be exempted from the tax when it becomes an ingredient or component part of manufactured tangible personal property that will be sold by a manufacturer in the regular course of its business. 32 V.S.A. § 9741(14); Reg. §1.9741(14)-3. <Company> does not manufacture the cartridges; to qualify as manufacturing, the process must consist of an integrated series of operations that results in a change of form, composition or character of the tangible personal property. Reg. §1.9741(14)-2. Here, neither the form, composition or character of the inkjet cartridge is changed. Rather, the cartridge is returned to its original condition.

Nor is the use of the <device> considered fabrication, a process similar to manufacturing where the customer furnishes materials either directly or indirectly and in most instances a new part is produced, material added or removed, or the appearance or makeup of the product is altered. 32 V.S.A. § 9771(3); Reg. § 1.9771(3)-1, 2. Fabrication charges, which include the charges for any tangible personal property used and labor expended, are fully subject to the sales tax if a new or different item is produced. Reg. § 1.9771(3)-3. Where the item is restored to original condition without producing new parts, such as in this instance, the service is not taxable fabrication and the sales tax applies to the labor charge only if charges are not separately stated on the receipt or invoice. *Id.*

It should also be noted that because the <device> constitutes tangible personal property not sold at retail or otherwise eligible for exemption, <company> is responsible for payment of the tax on its purchase. 32 V.S.A. § 9771 (1). If the seller of the <device> has nexus with the state or voluntarily collects and remits the tax to Vermont, <company> should pay the sales tax. *Id.* If sales tax is not paid upon purchase, <company> should pay the compensating use tax to the state. 32 V.S.A. § 9773. Moreover, the <device> does not qualify for the manufacturing exemption which applies only to “machinery and equipment for use or consumption directly and exclusively . . . in the manufacture of tangible personal property for sale, or in the manufacture of other machinery or equipment”. 32 V.S.A. § 9741(14). As discussed above, the inkjet cartridges are not manufactured by the <device>.

This ruling will be made public after deletion of the parties’ names and any information which may identify the parties. A copy of this ruling showing the proposed deletion is attached, and you may request that within thirty (30) days the Commissioner delete any further information that might identify the interested parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department’s general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

Section 808 of Title 3 provides that this ruling will have the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty days.

Sincerely,

Judith Henkin
Attorney for the Department

Approved this ____ day of _____, 2007.

Tom Pelham
Commissioner of Taxes