



State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

September 13, 2011

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: Vermont Department of Taxes Ruling Request # 2011-12

Dear [REDACTED],

This is a formal ruling for [REDACTED], regarding the applicability of sales tax to payment of a court judgment or from a third party guarantor which result from a lease default or from default on a financed sale. This ruling is based upon representations in your letter of [REDACTED] and the Master Lease Agreement which you emailed to me on [REDACTED].

FACTS

The descriptions in your letter are very brief, and our ruling is based on the facts as we understand them, as described in this ruling. You have asked whether Vermont sales tax will apply to [REDACTED]'s receipts from a court judgment or third party guarantor payment in either of two scenarios.

I. Under the first scenario, [REDACTED] leased equipment to a customer under a 60-month non-cancellable, irrevocable lease contract. [REDACTED] collected and remitted Vermont sales tax on the lease payments received. Before the end of the lease term, the customer defaulted on the lease contract, leaving a deficiency balance of \$55,000; which [REDACTED] charged off as bad debt. [REDACTED] may be awarded \$20,000 from a court of law, or \$10,000 from a third party guarantor, or both.

You have asked whether [REDACTED] must to remit sales tax upon receipt of a \$20,000 judgment or \$10,000 guarantor payment or both.



II. Under the second scenario, the customer purchased an item from a third party and financed it through ██████████ paid the third party for the item, and the customer agreed to repay ██████████ under a 60-month non-cancellable, irrevocable financing contract. Title was passed to the customer at the beginning of the contract, and ██████████ remitted the full sales tax based on the entire purchase price at the beginning of the contract. Before the end of the financing contract period, the customer defaulted on the contract. The property was then sold to an unrelated third party, with ██████████ collecting and remitting sales tax on that sale. ██████████ has not requested refund of any portion of the full sales tax remitted on the original transaction. These two transactions left ██████████ with a net deficiency on the original contract of \$25,000, which ██████████ charged off as bad debt. ██████████ may be awarded \$8,000 from a court of law, or \$2,000 from a third party guarantor, or both.

You have asked whether ██████████ must remit sales tax upon receipt of an \$8,000 judgment or \$2,000 guarantor payment, or both.

DISCUSSION

Scenario I

Vermont sales tax is imposed at the rate of 6 percent¹ of the sales price on retail sales of tangible personal property. 32 V.S.A. § 9771(1). "Retail sales" include leases, 32 V.S.A. § 9701(5), and "sales price" means

the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise. . . .

32 V.S.A. § 9701(4)(A). As a result, ██████████ correctly collected sales tax on each lease payment as it was received.

After the customer's default, if ██████████ receives a court award or a guarantor payment, the structure of that award or payment will determine the amount of any sales tax due on those proceeds. ██████████ Master Lease Agreement provides that, in case of default, ██████████ may recover, among other items, "the present value of all future rentals . . . contracted to be paid over the unexpired term of the Lease, discounted at the rate of four percent". ██████████ would owe sales tax on any portion of the court award or guarantor's payment which is identified as recovery of this present value of future rental payments. If no portion of the award or payment is so identified, then the recovery should be allocated pro rata among reimbursement of the present value of the future rentals and all other costs of default. The portion allocable to the future rental amount would be subject to sales tax.

Scenario II

Under the second scenario, the customer obtained an item from a third party and financed it through ██████████. ██████████ actually paid the third party vendor directly for the item, and the customer agreed to repay ██████████ over a period of 60 months. It is presumed that ██████████

¹ A local sales tax at the rate of 1 percent may also apply in certain local jurisdictions, 24 V.S.A. § 138.

treated its payment to the vendor as a purchase for resale (exempt from sales tax). When the item was delivered to [REDACTED] customer, [REDACTED] treated this financing transaction as a sale, and collected and remitted sales tax on the entire sales price.

When the customer defaulted on the financing payments, [REDACTED] apparently took possession of the property, since [REDACTED] then sold the property to an unrelated third party. At that point, [REDACTED] collected and remitted the sales tax on the entire sales price in that second sale.

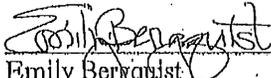
[REDACTED] has not applied for a refund of any portion of the sales tax it remitted on the initial sale of the item, even though the customer defaulted, leaving [REDACTED] with bad debt.

Since [REDACTED] remitted the full sales tax on both sales of the property, there would be no further sales tax due to Vermont, regardless of any amount [REDACTED] might subsequently recover from a court or guarantor.

GENERAL PROVISIONS

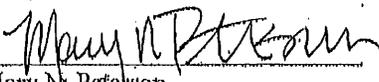
This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties.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

This ruling is issued solely to your firm and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to protect confidentiality, 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 statutes or regulations.


Emily Bergquist

September 13, 2011
Date

Approved:


Mary N. Peterson
Commissioner of Taxes

10/3/11
Date