

REDACTED VERSION

November 14, 2012

[address]

Re: Formal Ruling 12-08

Dear [redacted]:

This is a formal ruling for [Taxpayer] regarding the use of sales tax exemption certificates. This ruling is based upon representations in your letter of [date].

FACTS

[Taxpayer] bills its customers for all applicable costs and taxes at the time of sale. Some customers, however, pay the purchase price but do not include the sales tax, and do not present an exemption certificate to [Taxpayer] until months or even years later. This creates an administrative burden for [Taxpayer]. [Taxpayer] requests a ruling that the customer must pay in full at time of sale, or present an exemption certificate for refund of the taxes within 90 days of the sale; and that for any customer presenting a certificate more than 90 days after the sale, [Taxpayer] may require that the customer submit the request for refund of sales tax to the Department, rather than to [Taxpayer].

DISCUSSION

Under Vermont's sales tax laws, "a vendor's failure to possess an exemption certificate at the time of sale shall be presumptive evidence that the sale is taxable." 32 V.S.A. § 9745(a). The Department's regulations allow the vendor 90 days after the sale to obtain an exemption certificate as evidence that the sale was exempt:

C. The commissioner shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Streamlined Sales Tax Agreement (Agreement) within 90 days subsequent to the date of sale.

Dept. of Taxes Reg. § 1.9745-1(C). Thus, a vendor is only relieved of the obligation to collect sales tax on a transaction if the vendor obtains an exemption certificate from the purchaser at time of sale or within 90 days after the sale. The regulation does not require the vendor to sell the item without sales tax and then allow the customer 90 days to produce the certificate; it merely provides that the vendor may do so. [Taxpayer] may therefore require its customers to pay the sales tax at the time of sale if they do not produce an exemption certificate at that time. Or, [Taxpayer] may, at its option, choose to allow a customer to purchase without paying sales tax and then to submit the exemption certificate up to 90 days later. And [Taxpayer] may also, at its option, choose to allow a customer who paid sales tax at the time of sale to obtain a refund of the tax from [Taxpayer] if the customer presents the certificate within 90 days after the sale.

In all cases where a customer pays the sales tax and later presents a certificate that the sale was exempt, the customer may apply directly to the Department of Taxes for a refund. 32 V.S.A. § 9781. This option is available to the customer whether the certificate is presented one day after the sale, 90 days after the sale, or six months after the sale. However, a refund request must be made within three years from the date the tax was paid. Id.

In summary, [Taxpayer] may require its customers to pay sales tax if no certificate is presented at the time of sale. Or, [Taxpayer] may allow the customer to pay no sales tax at the time of sale and allow the customer 90 days to produce the exemption certificate. If [Taxpayer] collects the tax at time of sale, [Taxpayer] may offer to refund the tax if a certificate is presented within 90 days after the sale. Or, if [Taxpayer] collects the tax at time of sale, [Taxpayer] may instead require the customer to file its request for refund of the tax with the Department of Taxes - no matter how long after the sale the certificate is presented (up to the 3-year limit on refunds).

If [Taxpayer] refunds sales tax to a customer up to 90 days after a sale, [Taxpayer] may make a credit adjustment to its monthly sales tax return and explain the reason for the credit adjustment to the Department.

If [Taxpayer] does not collect sales tax at the time of sale, and does not obtain an exemption certificate from the customer, [Taxpayer] will become liable for the sales tax. If the Department discovers that [Taxpayer] has made an untaxed sale and failed to obtain the exemption certificate, the Department may request substantiation that the sale was exempt. In this case, [Taxpayer] will be given 120 days to prove the sale was exempt or to obtain a good faith exemption certificate from the customer. Dept. of Taxes Reg. § 1.9745-1(C)(1).

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 the taxpayer 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

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date