

Ruling 95-15

Vermont Department of Taxes

Date: September 29, 1995

Written By: George Phillips, Assistant Director

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a formal ruling on behalf of [Corporation] concerning the sales and use tax implications on purchases of equipment that are later sold to a leasing company for purposes of a leaseback arrangement. The ruling is based on the facts contained in your letter to the Commissioner of Taxes dated August 4, 1995 and information obtained during your telephone conversations of August 15, 1995 and August 30, 1995, with Gloria Hobson.

[Corporation] is in the business of operating a recreation area. It is purchasing equipment for an expansion of its pump station. [Corporation], at the time of purchase, to sell the equipment to [Company] and enter into a leaseback arrangement, [Corporation] buys the equipment from a vendor who ships directly to [Corporation]. The vendor bills [Corporation]. [Corporation] receives title to and possession of the equipment. The equipment is installed as it is received. [Corporation] anticipates the pump station will be in use for snowmaking by early November 1995. [Corporation] arranged with [Company] to sell them the equipment and then lease the equipment back. [Company] pays [Corporation] an amount equal to [Corporation's] cost of the equipment and receives title and ownership of the property, but the equipment remains in [Corporation's] possession. [Company] takes depreciation deductions against its taxes on the equipment. [Corporation] categorizes the transaction as a capital lease and expenses the lease payments. At the end of the lease period, [Corporation] may purchase the equipment from [Company] at either fair market value determined by an appraisal or a percentage of the original purchase price. If [Corporation] decides not to buy the equipment, the leasing company will remove the equipment from [Corporation's] premises.

[Corporation] placed a deposit on the large equipment pieces and the balance is payable in two installments, the first due October 1995. This sale to the leasing company will occur prior to the first installment date. The smaller equipment will be purchased and paid for by [Corporation]. This sale will be made to the leasing company in one transaction. The leasing company requires the lease to be completed no later than December 1, 1995.

[Corporation] has paid some of the vendors' invoices, The sales tax was paid if billed by the vendor; otherwise use tax has been accrued and paid.

Issues: Are [Corporation's] purchases of equipment that will subsequently be sold to the leasing company subject to sales and use tax?

Is the sale of equipment to [Company] by [Corporation] subject to sales and use tax? Are the lease payments paid by [Corporation] to the leasing subject to sales and use tax?

Ruling: There are three transfers of equipment. First, [Corporation] purchases the equipment; second, it sells the equipment to the leasing company; and third, the leasing company leases the equipment back to [Corporation].

The first transaction is not subject to sales and use tax. [Corporation] buys the equipment with the intent to resell the equipment to the leasing company. Property purchased for the purpose of reselling is exempted by 32 V.S.A. Section 9701(5). Although [Corporation] will install and use the equipment in its business operation before the sale to the leasing company, this is done in anticipation of the sale to [Company]. Factors such as the short interval between [Corporation's] purchase and its resale to [Company] and [Company's] willingness to pay the full retail price of new property indicate that any use by [Corporation] before the transfer was only incidental. [Corporation] may receive a refund of any tax paid in error by applying to the Department under the provisions of Regulation 1.978.

The second transaction is exempt from sales tax. [Company] is purchasing equipment for the purpose of leasing it to [Corporation]. 32 V.S.A. Section 9701(6) includes leasing in the definition of sale, and Regulation 1.9701(6)-2 indicates that "persons who purchase tangible personal property for the purpose of renting or leasing it to others during the entire period of its ownership by the purchaser are entitled to purchase such tangible personal property free of tax as a purchase for resale."

The arrangement between [Corporation] and [Company] is a true lease of tangible personal property. The leasing company receives title to the equipment and acquires the tax benefit of depreciation deduction. At the end of the lease, [Company] retains ownership of the equipment unless [Corporation] elects to buy the equipment at fair market value or 20% of the purchase price.

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.