

Ruling 95-17

Vermont Department of Taxes

Date: October 30, 1995

Written By: Mary L. Bachman, General Counsel

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a formal ruling on the application of the Vermont sales and use tax law to two types of leases offered by (Corporation]. This ruling relies on the facts outlined in your letter dated January 13, 1995.

Facts: (Corporation) is a (State] corporation with its corporate headquarters in (City, State]. [Corporation] leases many types of tangible personal property to businesses located in Vermont. It does not maintain a sales office in Vermont. (Corporation's] leases are of two types:

- (1) Company A buys non-exempt equipment and pays the vendor sales tax on the equipment cost. Later, Company A sells the equipment to Company B ([Corporation]), then leases it back from the Company B. Company A would have the option of purchasing the equipment at the end of the lease term for fair market value.
- (2) Company A buys non-exempt equipment and pays the vendor sales tax on the equipment cost. Later, Company A refinances the equipment with Company B ([Corporation]) through a sale and leaseback of the equipment. The "lease" states that "upon payment in full by lessee of all rent (and all other sums) payable to lessor hereunder, lessor shall release its interest in the equipment. Title never passes from A to B.

Ruling:

- (1) The tax consequences of these transactions depends upon the intent of the parties and the timing of the transactions. If A bought the equipment in anticipation of reselling it to B and in fact did resell it to B within a short time, A's purchase is exempt from sales tax as a purchase for resale. 32 V.S.A. § 9701(5).

Assuming that B's purchase of the equipment was for the purpose of leasing it back to A, the sale from A to B would also be exempt as a sale for resale. 32 V.S.A. § 9701(6) includes leasing in the definition of sale.

The lease payments from A to B would be subject to sales tax. This is a true lease of tangible personal property. At the end of the lease, B retains ownership of the equipment unless A elects to buy the equipment. The presence of its equipment in

Vermont is sufficient nexus to require B to collect sales tax on the lease payments from A and to remit that tax to the State of Vermont.

If A's purchase of the equipment was not made in anticipation of reselling the equipment, this transaction is a taxable sale. A's subsequent sale to B is an exempt sale for resale since A will lease the equipment back from B. 32 V.S.A. § 9701(5). A's lease payments to B are subject to tax. (See discussion above.)

A is entitled to a refund of tax paid on its original purchase of the equipment only if the equipment was purchased for the purpose of reselling it and the resale occurred within a short time of purchase.

- (2) This situation does not involve a true lease. Title never passes from A to B. Therefore, A need not purchase the equipment back from B at the end of the lease. A's obligations under the arrangement are satisfied upon payment of rent and other sums A's original purchase of the equipment is a taxable sale. The resale exemption does not apply because A's transfer of equipment to B is not a sale, but rather a transfer of security for the performance of its obligations to B.

A's transfer to B is exempt from the sales tax because the transfer is part of a secured loan transaction. Sales tax does not apply to sales which are in essence financing arrangements: "This chapter shall not cover the following transactions: (7) The sale of tangible personal property where the purpose of the vendee is to hold the thing transferred as security for the performance of an obligation of the vendor." 32 V.S.A. § 9742. The rationale for this exemption appears to be that where a transfer of property is not an actual transfer to the vendee, free and clear, but is rather a temporary transfer of property to secure a loan from the vendee, the sales tax should not apply.

Finally, A's lease payments to B are not taxable. As noted above, section 9742(7) exempts from the sales tax a "sale", where the substance of the transaction is to secure a loan. The exemption also applies to a lease if the substance of the transaction is to secure a loan. The exception for financing "sales" would make no sense if the transfer of the security were exempt, but the loan payments were not. Where the substance of the entire transaction is a secured loan, there is no true sale or lease and sales tax does not apply.

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 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.