

Ruling 96-07

Vermont Department of Taxes

Date: April 3, 1996

Written By: Gloria Hobson, Business Taxes Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

You requested a formal ruling to determine if your business activities are sales of tangible personal property or work done as a contractor improving real property. The ruling is based on the information contained in your letter of December 29, 1996.

Issue: Is the seller of customized, installed water treatment systems considered a contractor who buys tangible personal property to improve real property as defined in 32 V.S.A. Section 9701(5)?

Facts: [Taxpayer] sells, installs and services water treatment systems. The installation is done by your technicians and "do-it-yourself" installation is very rare. The water treatment system is customized to treat the water at the home. The water treatment system would not be of any value at another location unless that water composition is exactly the same as water supply for which the treatment system was designed. The system parts are plumbed into the customer's plumbing system similar to a hot water heater. The water system is difficult to remove and generally not taken when the customer moves. [Taxpayer] also sells filters and supplies for these water systems.

Ruling: Customized, installed water systems plumbed into the customer's plumbing system are sales of tangible personal property. [Taxpayer] is not a contractor for sales tax purposes under 32 V.S.A. Section 9701(5). As a vendor, [Taxpayer] purchases the water treatment components tax exempt as a sale for resale and is responsible for collecting the sales tax from their customers.

Under 32 V.S.A. Section 9701(5), retail sales are categorized as either sales made by a vendor or sales made to a contractor, subcontractor or repairmen of materials and supplies to build, improve, alter or repair real property. A vendor purchases tax exempt as a sale for resale and collects the tax from the customer. A contractor, subcontractor or repairman pays the sales and use tax as the consumer of the items even though the items are transferred to the owner of real property as part of the agreement between the owner of the real property and the contractor.

The criteria to determine if the items are for construction, improvement, alteration or repair of real property are: 1) the item is essential for the real property to be habitable and, 2) the item cannot be removed without material physical damage to the real property or to the real property's habitability.

A water treatment system may be desirable for the occupant to feel they are getting pure water or to enhance performance of other appliances (for example, a water heater), but it is not necessary to make the real property suitable for occupancy. The structure must already have the essentials of a water source and delivery system in place for a water treatment system to be usable. While the water treatment system is plumbed into the structure's plumbing system and treatment customized for a specific water source, it can be removed without damage to the real property existing water system.

As a vendor, you will purchase the water treatment components tax free. When the system is sold, you collect the sales tax from your customer and remit the tax to the Department. If you bill the customer one price as an installed water treatment system, the entire amount is subject to sales tax if there is no break out between the labor charges and the water treatment system items. 32 V.S.A. Section 9701(4).

[Taxpayer] is also considered a vendor for sales of supplies for water treatment systems such as filters, chemicals, etc. These supplies are purchased tax exempt as a sale for resale, and you collect the sales tax from your customer and remit the tax to the Department.

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.