

Ruling 2000-01

Vermont Department of Taxes

Date: January 5, 2000

Written By: George Phillips, Tax Policy Analyst

Approved By: Sean P. Campbell, Commissioner of Taxes

Your letter of December 8, 1999 asks for a ruling regarding reciprocal credits for sales or use tax paid to another state in various situations which commonly occur in your business.

Your letter indicates that [business] engages in three types of transactions: 1) "True leases" (where the lessee has an option for purchase at fair market value or other non-nominal price.), 2) "Financing leases" (where the lessee takes title to the property when the lease arrangement is made), and 3) "Installment sales" ([business], the lessor, holds title throughout the lease period then transfers title to the lessee for nominal consideration). All of these arrangements typically run for three to five years. In some cases, the property is used in more than one state during the period of the agreement and may be subject to sales or use tax in more than one state.

This ruling applies to the Vermont sales and use tax imposed by chapter 233 of title 32, Vermont Statutes Annotated. Therefore, it assumes that the property in question is not a motor vehicle taxed under chapter 219 (the motor vehicle purchase and use tax). The latter tax is administered by the Department of Motor Vehicles and is based on a separate set of laws and administrative rules.

Before discussing the availability of reciprocal credits, it is useful to review general rules for taxing purchases, leases, conditional sales and installment sales. The definition of "sale" includes rental or lease. 32 V.S.A. § 9701(6). Lessors of tangible personal property generally acquire the property tax-exempt under the resale exemption and collect tax on the lease charges. Regulation 1.9701(6). Each charge made under a lease agreement is treated as a separate "sale" and is subject to Vermont sales tax if the property is in the state during the period covered by the charge. Certain items commonly referred to as leases, however, are effectively either secured loans or installment sales. These are sales subject to tax when the obligation to pay is established. Under certain circumstances, the Commissioner may approve for taxes to be collected on the individual payments (Reg. 1.9779) but the general rule is that the tax is collected and paid when the transaction is made. Vermont tax is imposed on such transactions if the purchaser (the nominal lessee) receives the property in Vermont. A reciprocal credit is available to reduce use tax for sales or use tax legally due and paid to another jurisdiction. 32 V.S.A. § 9744(a)(3). There is no provision for a reciprocal credit against sales tax. In the case of a financing lease or a conditional sale the sales

tax jurisdiction is fixed by the location where the property is received. If the property was received in another state and subsequently moved to Vermont, any Vermont use tax liability would be reduced by the tax paid to the first state. In the case of a true lease, Vermont sales tax collected only for periods during which the property is located in Vermont. If during any period the property is used in another state and then in Vermont, the tax paid to the other state on the charge for that period may be used to reduce the Vermont tax.

In specific cases:

Situation 1. [Business] enters into a true lease with Company A requiring 60 monthly lease payments of \$1,000. Company A takes possession of the property in State X and during the first month relocates the property to Vermont. State X imposes a 4% (\$40) tax on the first lease payment. The 5% Vermont tax may be offset by the \$40 tax paid to State X. The Vermont tax due is \$10 for the first month and \$50 for subsequent months.

Situation 2. As above except the possession is taken in State Y. State Y also has a 4% tax but requires that its tax be collected on all of the lease payments if the property is transferred in the state. The Vermont tax may be reduced by the \$40 paid to State Y only for the first month, when the property was used in both states.

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.