

Ruling 2002-04

Vermont Department of Taxes

Dated: July 19, 2002

Written By: George Phillips, Policy Analyst

Approved By: Janet Ancel, Commissioner of Taxes

You have requested a ruling regarding the timing of tax payments pursuant to [company A]'s Direct Pay Permit Number []. This ruling relies on your letter of June 30, 2002.

[Company B] and [company A] have entered into a purchase and sale agreement whereby [company A] will purchase [company B]'s [facility] at Closing, "Closing" means the date of the transfer of title to, and ownership of, the assets which are the subject to the Purchase and Sale Agreement dated [date] between [company B] and [company A]. [Company A] estimates Closing will occur on or about [date].

[Company B] is the holder of a Direct Pay Permit. Pursuant to the permit, [company B] currently has items in its materials and supplies inventory that have been purchased from vendors but upon which Vermont sales/use tax has not been paid due to the fact that such items have not been withdrawn from storage for assignment to a taxable use ("unassigned inventory"). These items will be transferred to [company A] at closing.

[Company A] is the holder of a Direct Pay Permit [] issued by the Tax Department pursuant to 32 V.S.A. § 9745 and Tax Department Regulations Nos. 226-4, 1.9775(e). Following the closing, [company A] anticipates purchasing materials and supplies for inventory. When these materials and supplies (both those transferred at Closing and subsequent purchases) are removed from inventory and assigned to an ultimate use, a portion will be used for purposes exempt from sales tax because of title 32, Vermont Statutes Annotated, section 9741(14) (the manufacturing exemption) or other applicable exemptions based on use. The remainder will be used for purposes not exempt from Vermont sales tax.

Ruling:

Pursuant to its Direct Pay Permit, [company A] should not pay tax on such materials and supplies transferred from [company B] at closing or at the time of subsequent purchases of such materials and supplies. Tax becomes due in the period that any item is removed from unassigned inventory and assigned to a non-exempt use. The tax liability must be reported and paid on [company A]'s Vermont sales and use tax return for that period.

You have requested a ruling that the transfer at closing of unassigned inventory is exempt pursuant to 32 V.S.A. § 9741(4) (Casual Sale). Because both [company A] and [company B] hold Direct Payment Permits, the casual sale exemption will not apply to

the unassigned inventory transferred. As Direct Pay Permits are subject to conditions specified by the Commissioner, 32 V.S.A. § 9745, and not granted where payment of tax is jeopardized, Reg. 1.9745 (formerly 226-4), the Commissioner requires [company A] as a condition of its Permit to pay tax on unassigned inventory acquired at closing on the same basis as subsequently purchased property when it is removed from general inventory and assigned to a non-exempt use. This requirement applies only to "unassigned inventory" as described in paragraph 3 above, that was purchased under [company B]'s Direct Payment Permit and transferred to [company A] at closing. The transfer of other property, if shown by [company B] to be isolated or occasional, would qualify as an exempt casual sale.

This ruling is issued solely to [company A] 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.

3 V.S.A. § 808 provides that this ruling will have the same status as an agency decision or order in a contested case. You have the right to appeal this ruling within thirty (30) days.