

September 14, 2010

<REQUESTER>
<COMPANY>

Formal Ruling 2010-15

Dear <REQUESTER>:

You requested a formal ruling on behalf of <COMPANY> concerning the imposition of the Vermont sales tax. This ruling is based on the following facts, which you have provided.

Facts:

<COMPANY> sells new energy efficient appliances at retail to its customers. Sometimes, the appliance manufacturers or utility companies offer a rebate on certain models. In order to receive the rebate, customers typically submit an approved rebate form with proof of purchase to the appliance manufacturer or utility company (“the third party”) that is offering the rebate. Once approved, a rebate check is mailed directly to the customer.

<COMPANY> has attempted to simplify the rebate process for its customers by providing them with instant point of sale rebates. Instead of submitting rebate forms to the third party, <COMPANY> charges its customers the full price of the item, minus the amount of the rebate, itemizing each on the customer receipt. Thereafter, <COMPANY> submits the rebate documentation to the third party, and when approved, receives the rebate as reimbursement for the customer’s point of sale discount. For example, if a manufacturer offers a \$100 rebate on a \$1000 appliance, <COMPANY> charges its customer \$900 – the full price of the appliance minus the \$100 rebate, with each amount itemized.

Issues:

- (1) If <COMPANY> is reimbursed by the third party manufacturer for the rebate provided to its customer, should <COMPANY> collect tax on the full price of the item, or the price minus the rebate?

The “sales price” that is subject to the tax is defined, in relevant part, as

the total amount of consideration . . . for which personal property or services are sold, leased, or rented, valued in money . . . including consideration received by the seller from third parties if:

- (I) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
- (II) The seller has an obligation to pass the price reduction or discount through to the purchaser;
- (III) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- (IV) One of the following criteria is met:
 - ***
 - (cc) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

32 V.S.A. § 9701(4)(A).

Pursuant to 32 V.S.A. § 9771 (1), sales tax is imposed on retail sales of tangible personal property in this state. The tax is imposed on the “sales price” which, under the law as cited above, includes the amount of the rebate.

- (2) What if the third party rebate is from a utility company?

The answer is the same as in (1). The rebate is taxable.

- (3) Would the answer to question (2) differ if the reimbursement for the rebate received from the utility company was funded through a state or local government agency?

No, the source of the funding of the rebate is immaterial. <COMPANY> is still being reimbursed by a third party for the discount, and must collect the tax.

- (4) What if <COMPANY> is reimbursed directly from the state or local government agency for the rebates?

The definition of sales price does not exclude from the tax price reductions reimbursed to the seller by government agencies. <COMPANY> should collect the tax from its customers on the entire sales price, which includes the rebate.

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletion is attached, and you may request that within thirty (30) days the Commissioner delete any further information that might identify the interested parties. The final discretion as to deletions rests with the Commissioner.

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.

Section 808 of Title 3 provides that this ruling will have the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty days.

Sincerely,

Judith Henkin
Attorney for the Department

Approved this ____ day of _____, 2010

SIGNED

Ellen Tofferi
Acting Commissioner of Taxes