

REDACTED VERSION

Re: Formal Ruling 12-12

Dear [Taxpayer]:

This is a formal ruling for [Taxpayer] regarding the applicability of sales tax to Taxpayer's provision of safes to its customers as part of its cash security services. This ruling is based upon representations in your letter of November 2, 2012, our telephone conversation and emails of December 5, 2012, and a copy of Taxpayer's service contract.

FACTS

Based upon the facts presented, we understand that Taxpayer provides a cash security service to its customers, which includes pick-up of the customer's cash in secure armored cars, secure transport of the cash, and deposit of the cash at the customer's depository institution. This service is provided under a long-term contract with the customer. As part of the cash security service contract, Taxpayer provides each customer a safe, to be kept on the customer's premises and used to hold cash until pickup by Taxpayer. Taxpayer delivers the safe to the customer's place of business. Taxpayer retains ownership of the safe at all times. The contract includes a one-time charge for installation of the safe, but does not include a separate charge for lease or rental of the safe or any other separate charge for the safe. Each contract is related to a single safe ("Equipment unit"). The customer pays a single charge for the entire contract. If the customer has more than one safe there is a contract charge for each such safe.

Taxpayer estimates that the lease value of the safe would be approximately one-third of the total cost of the cash security service. Taxpayer provides the safes to its customers only in

connection with its cash security service, as a means for the customer to hold cash securely until picked up by Taxpayer.

When Taxpayer purchases a safe for use in providing its cash security services, it either pays sales tax at the time of purchase of the safe or pays use tax on the safe to the Vermont Department of Taxes.

DISCUSSION

You have asked for a ruling on whether Taxpayer may bill its customer a single charge for its cash security service, which includes use of a safe supplied to the customer, and properly charge no Vermont sales tax on the total transaction price.

Vermont sales tax is imposed upon retail sale of tangible personal property, admission to a place of amusement, and sale of the following specified services: public utility services, fabrication services, telecommunications services, directory assistance. 32 V.S.A. § 9771.

Taxpayer in this case provides a security service, which is not one of the services specified as subject to Vermont sales tax. Taxpayer also provides to its service customers the use of a safe, which is tangible personal property subject to the sales tax. The service and the use of the safe are sold together in a "bundled" transaction; that is, they are sold to the customer for a single, non-itemized, contract price. The Department of Taxes regulations provide that, as a general rule, a transaction which bundles taxable and nontaxable items is subject to the sales tax. The bundled transaction will not be subject to sales tax, however, if the tangible personal property is essential to the use of the service and is provided exclusively in connection with the service, and the true object of the transaction is the service. Alternatively, a bundled transaction will not be subject to the sales tax if the sales price of the taxable item is less than 10 percent of the total sales price for the bundled transaction. The regulation reads as follows:

Bundled Transaction.

A bundled transaction is the retail sale of two or more products . . . where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. Except as otherwise provided by this regulation, sales tax must be collected on the selling price of a bundled transaction if any product included in the bundled transaction would be taxable if sold separately.

* * *

C. A transaction that otherwise meets the definition of a bundled transaction as defined above is not a bundled transaction if it is:

1. The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

* * *

3. A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.

(a) "De minimis" means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products. . . .

Department of Taxes (DOT) Reg. § 1.9701(4)-3, "Bundled Transaction."

In the transaction which you describe, the lease value of the safe is approximately one-third the total contract price. Since the sales price of the safe exceeds ten percent of the sales price for the total contract, the "de minimis" exception under Regulation § 1.9701(4)-3(C)(3) does not apply to Taxpayer's transaction.

Under Regulation § 1.9701(4)-3(C)(1), however, Taxpayer's transaction will not be deemed a "bundled transaction," and the charge for the transaction will be exempt from Vermont sales tax, because the safe is essential to the use of the cash security service and is provided exclusively in connection with the service, and the true object of Taxpayer's transaction is the cash security

service. A taxpayer who is exempted from sales tax under this Regulation § 1.9701(4)-3(C)(1) is deemed to be a "user" subject to use tax on the tangible personal property transferred in the service transaction. DOT Reg. § 1.9701(4)-3(E)(3). Taxpayer would owe use tax at the time the safe is transferred to the customer. Id.

If Taxpayer had already paid sales tax when it purchased the safe, Taxpayer would owe no use tax, except to the extent that the sales tax paid was less than the use tax owed (if, for example, the safe was purchased in a state with a sales tax rate lower than Vermont's or with no sales tax). 32 V.S.A. §§ 9773, 9774.

In summary, Taxpayer may bill its customers a single charge for the cash security service, which includes use of a safe, and properly charge no Vermont sales tax on the transaction, because the focus of the transaction is a nontaxable service. Taxpayer must either pay sales tax on its purchase of each safe, or if sales tax is not paid or is paid at a rate lower than six percent to another jurisdiction, then Taxpayer must pay Vermont use tax when it transfers the safe to the customer.

GENERAL PROVISIONS

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 deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to protect confidentiality, 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 statutes or regulations.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808,815.

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date