

August 28, 2013

Re: Formal Ruling 13-04

Dear [Taxpayer]:

This is a formal ruling for [company], regarding the applicability of Vermont's sales and use tax to your purchase of [product] from the manufacturer and resale to your customers or their installing contractor. This ruling is based upon representations in your undated letter, postmarked [date].

### **RULING**

When you purchase the [product] components from the manufacturer, there will be no sales tax due, because that is a purchase for resale. You will resell the components either directly to your customer or to the installing contractor. Your resale to the customer or to the installer will be subject to sales tax. If your sale to the customer includes a charge for the installation, that installation charge will be subject to the sales tax unless separately stated on the invoice. If your sale to the customer or the installer includes a charge for delivery, that delivery charge will be subject to sales tax, whether or not separately stated.

### **FACTS**

As we understand the facts, your company will purchase prefabricated [product] components from the manufacturer. You will contract with a third party to install the [product] components at your customer's site. You will then either sell the components to your customer, with an additional charge for transportation and installation, or you will sell the components to the contractor you have hired to install the [product], with an additional charge to the contractor for transportation.

The prefabricated [product] components will be installed onto a series of anchor bolts which are set into a concrete foundation. The free-standing [product] when installed will stand in front of your customer's main building, and constitute [a structure] with the [product] at the top, through which customers will pass just before they enter the main building.

You have asked for a ruling on how and when Vermont sales tax will apply to sales of the [product]. You have also asked whether the [product], when installed, will be considered real property or tangible personal property.

### **DISCUSSION**

The prefabricated components are tangible personal property. 32 V.S.A. § 9701(7). If your purchase occurs in Vermont, then when you purchase the components from the manufacturer, they are purchased for resale, and so, not subject to sales tax at that point. 32 V.S.A. §§ 9701(5); 9771(1). (If they are purchased outside Vermont, that sale is obviously not subject to Vermont sales tax.)

When you sell the components to your Vermont customer, that is a retail sale of tangible personal property subject to sales tax. 32 V.S.A. § 9771(1). If you instead sell the components to a Vermont contractor, to install at your customer's site, that is also a retail sale of tangible personal property subject to sales tax, because the Department regulations provide that "sales to contractors . . . of materials and supplies for use by them in erecting structures . . . are retail sales." Dept. Reg. § 1.9701(5)-1.

If you sell the components to a non-Vermont contractor, there will be no sales tax due at that time. The installing contractor, however, could be subject to use tax at the time of "any installation [or] any affixation to real or personal property" of the components in Vermont, and might be eligible for a credit for any sales tax paid to another state on the components. 32 V.S.A. §§ 9701(13), 9773(1), 9744(a)(3).

The sales price which is subject to sales tax includes any delivery charge, whether or not the charge is separately stated. 32 V.S.A. § 9701(4)(A)(iv).



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Emily Bergquist

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Date

Approved by:

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Mary N. Peterson  
Commissioner of Taxes

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Date