

[Date]

[Taxpayer]

[Address]

[Address]

[Address]

Re: Formal Ruling 14-

Dear [Taxpayer Representative]:

This is a formal ruling for [Taxpayer name] ("Taxpayer"), regarding the applicability of sales tax to primer and paint purchased by an auto body repair shop for use in its auto repair service. This ruling is based upon representations in your letter of January 17, 2014, and the materials you enclosed with your letter.

RULING

An auto body shop is liable for sales tax on primer and paint which it purchases for use in its auto repair service.

FACTS

Taxpayer is an auto body repair facility. For some customers' repairs, Taxpayer applies primer and paint to the customer's automobile. The paint is custom-mixed, using a specified color formula for each auto, and quantities are carefully calculated to minimize waste.

You have asked for a ruling on whether Taxpayer is liable for sales tax on the primer and paint when purchased for use in its business; or whether, instead, Taxpayer is exempt because

the primer and paint are purchased for resale, and Taxpayer's customer is then liable for sales tax on these items because, "When the car leaves the shop, the paint and primer leave with it."

DISCUSSION

Vermont imposes a sales tax on retail sales of tangible personal property. 32 V.S.A. § 9771(1). A "retail sale" does not include a purchase for resale. 32 V.S.A. § 9701(5). Your question is whether the "resale" exemption applies in Taxpayer's case; that is, whether the auto body shop may purchase the primer and paint and pay no sales tax, because the primer and paint will be "resold" by the body shop to its repair customer.

The Department has historically interpreted the law to require a body shop to pay sales tax on primer and paint when it purchases them for use in its repair work. A 1982 statement by the Commissioner provides as follows:

If you operate a body shop, you must pay Sales Tax to your supplier on the purchase of items used in performing this service on customers' vehicles. These items include paints, bondo, sandpaper, primers, body fillers, etc.

Memorandum from Commissioner Hoiska to Auto Dealers, Auto Body Shops and Garages,
Re: Sales Tax Treatment of Tires, Supplies and Auto Parts; dated December 1982. A 1986 publication reiterated the Department's position on this issue:

If your dealership also has a body shop, you must pay a sales or use tax on items consumed in performing services on customers' vehicles, e.g., paints, bondo, sandpaper, primers, body fillers, etc. No tax is charged to your customer for the items so consumed.

Department of Taxes, "Notice To Auto Dealers & Auto Body Shops," dated January 1986.

These two publications explain that the Department views the primer and paint as "consumed" in the performing of the repair service.

As you note, quite logically, "when the car leaves the shop, the paint and primer leave with it." But the paint does not "leave with the customer" in the sense that the customer has taken

possession or title to an amount of paint in a taxable retail sale. The paint has become an integral part of the repaired auto, in the same way the bondo and filler have become integrated with the auto in the course of performing the repair service. You stated that the paint must be custom-mixed for each car's color formula, and that quantities are carefully calculated to minimize waste. The fact that any paint left over after the repair is merely "waste," and of no further use, is also indicative that the paint is consumed during the repair; the leftover waste paint would be analogous to the used sandpaper which is "consumed" in the course of the repair.

In a similar case, a California court also held that an auto repair shop must pay sales tax on its purchases of "paints and materials" because they are "supplies consumed in performance of the repair." Modern Paint and Body Supply, Inc., v. State Board of Equalization, 87 Cal.App.4th 703, 708, 710 (2001). In that case, the court held that there was no resale by the auto repair shop, because the auto body paint and materials were not transferred to the customer in a retail sale, but were used by the shop in providing the repair service. Id. at 709.

Based on the law and the Department's long-standing position on this issue, primer and paint are not purchased by the body shop for resale, and so, are taxable to the body shop when it purchases them.

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