

February 26, 2016

[Taxpayer Representative]  
[Address]  
[Address]  
[Address]

Re: Formal Ruling 16-02

Dear [Taxpayer representative]:

This is a formal ruling for your company, [company], regarding the applicability of sales tax to your sales in Vermont of your [product]. This ruling is based upon representations in your letter and accompanying drawings, received in this office [date].

### RULING

Based upon the facts presented, Vermont sales of your [product] are subject to sales tax.

### FACTS

Your company manufactures and installs [product] for storage of merchandise. You sold and installed [it] for your Vermont customer, for use in its warehouse building.

The [product] consists of steel [shelves] which sit on a base plate that is anchored to the floor. Anchor bolts are embedded in the concrete floor to a minimum depth of 3 3/8 inches. The anchor bolts have a screw thread at the top which extends above the floor. A removable nut is used to fasten the base plate to the floor by means of the anchor bolt. Once the base plate is affixed to the anchor bolt, and the [shelving] is fastened to the base plate, the [shelving] will not overturn and will not slide if hit with a fork lift in the warehouse. The nut may be removed and the [shelving] reconfigured in the same building or moved to a different building.

If the [shelves are] removed from the building, the anchor bolt screw thread which projects above the floor may be cut or ground down flush with the concrete floor, and the area can then be used for other purposes.

You have asked whether the [product] is tangible property subject to sales tax, or is real property exempt from the sales tax.

## DISCUSSION

Vermont's sales and use tax applies to sales of "tangible personal property." 32 V.S.A. § 9771(1). The sales tax regulations provide that "tangible personal property" does not include real property. Vermont Department of Taxes Regulations, § 1.9701(7)-1.B.1.

When an article of personal property is affixed to real property, it may itself become real property. Three factors determine whether personalty has become realty: (1) whether the item is affixed to the real estate; (2) whether the item is adapted to the use of the realty to which it is affixed; and (3) whether the item was affixed with an intention to make it a permanent accession to the realty. Sherburne Corp. v. Town of Sherburne, 124 Vt. 481, 484 (1965). The most important of these three factors is the intent to make the item a permanent part of the realty. Id. Whether the item has been affixed to the real estate is determined by whether the item can "be removed without permanent damage to the real estate." Id.

From your description, it appears that the only item affixed to the real property is the anchor bolt embedded in the cement floor. The bolt could not be removed without damage to the floor and to the bolt. The bolt is destroyed during removal, as the top is cut off, and any portion remaining above the floor surface is ground off. The anchor bolt becomes part of the realty.

On the other hand, your [product] and [shelves] are not damaged when removed from the anchor bolts, may be removed with no damage to the [product] or the real property which houses it, and may then be reused elsewhere.

Since the [product] and [shelves], once removed from the anchor bolt, are undamaged and may be reused, they differ from the silos, for example, which were found to be a part of the real estate in George v. Town of Calais, 135 Vt. 244(1977). In that case, the silos were erected on a poured concrete foundation. The base section of the silo was bolted to the foundation, and the base section was then filled with two feet of concrete. The upper sections of the silo were then assembled on top of the base section. The court held that the upper sections of the silo, which could be removed without damage to the realty, would "be of no real independent use." The silos were therefore fixtures and taxable as real property by the Town.

Based on your description, the affixed anchor bolts become realty, but the [product] and [shelves] do not. The [product] may have a "real, independent use" in a new configuration or on a new site. It is therefore tangible personal property and subject to Vermont sales tax.

The result might be different for a [product] which is so specifically designed for a unique space that it would have no real independent use in any other configuration or location. A design uniquely specific to the space, similar to built-in shelving, might constitute evidence of the parties' intent that the [product] remain affixed as a permanent accession to the realty.

**GENERAL PROVISIONS**

Issuance of this ruling is conditioned upon the understanding that neither the taxpayer nor a related taxpayer is currently under audit or involved in an administrative appeal or litigation concerning the subject matters of the ruling. 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.

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.

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

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Emily Bergquist

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Mary N. Peterson  
Commissioner of Taxes

\_\_\_\_\_  
Date