

[Date]

[Taxpayer Representative]

[Title]

[Address]

[Address]

[Address]

Re: Formal Ruling 16-04

Dear [Taxpayer Representative]:

This is a formal ruling for [Taxpayer], regarding the method of invoicing when sales tax is involved. This ruling is based upon representations in your letter dated [Date], and the attached material.

FACTS

Your company, [Taxpayer] (Taxpayer), leases tangible personal property (equipment) to its customers. You state, "Associated with the leased equipment are non-taxable items such as freight, installation, document fees and other costs." Under the lease agreement, the customer makes periodic payments, and at the end of the lease term has the option to purchase the equipment. Each periodic payment is invoiced as a single payment amount, with no itemization of the pieces of equipment or the associated non-taxable charges or the tax. Taxpayer, however, keeps records that itemize the components of each periodic payment and the sales tax, if any, applicable to each item, as shown on your attached sample. The itemized record is not provided

to the customer. The sample record you provided implies that at least some of the periodic payments are monthly.

You have asked whether sales tax applies to the entire periodic payment amount, or may be applied only to the portion of the payment that is for taxable items.

DISCUSSION

General

Vermont sales tax is six percent of the retail sales price of tangible personal property. 32 V.S.A. § 9771(1). A retail “sale” includes the lease or rental of property. 32 V.S.A. § 9701(5). The lease payments you charge your customers for lease of tangible personal property are therefore subject to Vermont sales tax. A one-percent local option sales tax applies in some Vermont towns, as well. 24 V.S.A. § 138.

Sales tax must be shown on first documentation to customer of the price

You mentioned that Taxpayer does not send to its customer a copy of Taxpayer’s itemized record of the taxable and non-taxable components for each periodic payment. The sales tax law requires that if you provide your customer with documentation of the price of the transaction, such as a contract, sales slip, invoice, receipt, or any statement of the price, then you must show the sales tax separately on the first of those documents given to the customer. 32 V.S.A. § 9778.

Therefore, prior to Taxpayer’s first periodic billing, Taxpayer should provide the customer with advance notice of the lease prices and the amount of sales tax payable on the taxable lease items. This would be sufficient notice under the law, and the sales tax would then apply only to the portion of the subsequent periodic payments which are for taxable items, even though the periodic invoice is not itemized and does not show the sales tax amount separately.

Taxpayer must keep adequate records of taxable and non-taxable lease items

In addition to notice to the customer of the sales tax on the transaction, the law requires the vendor to keep records of every sale (or lease) and the applicable sales tax. 32 V.S.A. § 9709. These records must be kept for three years. Id. Taxpayer's records which itemize the components of each periodic lease payment and the applicable sales tax (if any) for each item would satisfy the record requirement, if these records are kept for at least three years. A leased item will be presumed taxable unless Taxpayer retains records which prove the item was non-taxable. 32 V.S.A. § 9813. Taxpayer will be liable for any required sales tax it fails to collect. 32 V.S.A. § 9703(a).

Taxable sales price includes delivery charges, but not installation charges

The taxable sales price includes delivery charges, but excludes installation charges. 32 V.S.A. § 9701(4)(A)(iii), (iv); (B)(iv). The "freight" charge you mention will be a taxable charge if it is for delivery of taxable equipment to the customer. You may allocate a delivery charge between taxable and non-taxable items shipped together, as described in the Department's regulations:

"Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Direct mail charges that are separately stated on an invoice or similar billing document given to the purchaser are excluded from the definition of "delivery charges." 32 V.S.A. § 9701(26).

If a shipment includes exempt property and taxable property, the seller may allocate the delivery charge by using:

1. a percentage based on the total sales prices of the taxable property compared to the sales prices of all property in shipment; or
2. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

If the seller elects not to allocate the delivery charge, the entire charge is subject to the tax.

Department of Taxes Sales and Use Tax Regulations, eff. Nov., 2010, (“Reg.”) § 1.9701(4)–1.

Services necessary to complete the sale are taxable

The regulations provide that the taxable sales price also includes “charges for services necessary to complete the sale.” *Id.* (“Even where stated as a charge separate from the charge for the property . . . the sales price includes . . . charges for services necessary to complete the sale . . .”). You mentioned “document fees and other costs.” If these are charges for services necessary to complete the lease, they will be subject to sales tax; if they are optional items for the customer, they are not necessary to complete the lease.

Bundled transactions

Special tax rules apply to “bundled” transactions. A bundled transaction is one in which several items are sold together for a single, non-itemized price, and the price does not depend on the customer’s selection of items for inclusion in the transaction:

Bundled Transaction. A bundled transaction is the retail sale of two or more products, except real property and services to real property, 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.

Reg. § 1.9701(4)–3. There is insufficient information in your letter to determine whether the transactions you describe will be bundled. They will not be bundled if the price of a lease will vary based on the customer’s selection of items to lease. If Taxpayer’s leases do meet the definition of a bundled transaction, then the sales tax will apply to the entire lease price, even if some of the items in the bundled lease package would, alone, be non-taxable.

A transaction will not be taxed on a bundled basis, even if leased for a single, non-itemized price, if Taxpayer provides the customer with sales-related documentation showing the itemized prices of the items being leased:

B. The term “one non-itemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

Reg. § 1.9701(4)–3(B). Even though Taxpayer does not break out the price of the separate leased items in the periodic billing statements, if Taxpayer does provide the customer with an initial invoice or other sales-related document showing the prices of the separate items, the lease will not be taxed as a bundle. In that case, the sales tax would be imposed only on the taxable items in the lease.

Finally, if Taxpayer leases several items in a bundled transaction, the entire bundle will be tax-exempt if at least half of the bundle (by price or cost) comprises items which are exempt as food, drugs or medical equipment or supplies, as defined in the sales tax law:

4. The retail sale of exempt tangible personal property and taxable tangible personal property [is not a taxable bundle] where:

(a) the single-price transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies; and

(b) where the seller’s purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.

Reg. § 1.9701(4)–3(C)(4).

As noted earlier, Taxpayer is required to state the amount of sales tax on the transaction in the first documentation of the price to the customer. This means that if the lease is a bundled transaction, Taxpayer must provide the customer with an initial statement of the bundled sales tax amount.

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 see 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.

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date