[Date]

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

Re: Formal Ruling 16-12

Dear [Taxpayer Representative]:

This is a formal ruling for your company, [Taxpayer], regarding the applicability of sales tax to your sales of custom signs. This ruling is based upon representations in your letter dated [Date].

FACTS

[Taxpayer], Taxpayer, designs, manufactures, installs and services custom signs of all types. The seven most common types are [Types]. Taxpayer manufactures its signs in its facilities in [Location]. All signs are designed specifically for the installation site.

Taxpayer uses a subcontractor to install all of its signs, and does not sell signs except for installation by its subcontractor at the customer's site. Taxpayer bills the customer for the installed sign, and the customer makes no separate payment to the installer. Taxpayer charges the customer for the sign, and for time and material, and installation and freight. If a local permit is required to erect the sign, Taxpayer passes through to the customer the permit fee. If a survey is involved, Taxpayer also passes through to the customer the engineering stamp fee. An engineering stamp is required by the city hall to secure the permit to erect the sign.

After installation, Taxpayer may also maintain and repair the sign, and charges the customer for the necessary labor and parts.

All seven types of signs are custom designed for the customer's business site, and are affixed to the realty by installing into, or bolting onto, concrete foundations, or by bolting onto the existing exterior or interior building walls; except certain interior signs may be mounted on the walls using adhesive tape. Removal of any of the signs and their foundations, except certain interior signs, would result in damage to the real estate.

DISCUSSION

A person who manufactures or assembles an item of tangible personal property will owe a use tax on that item if it is "used" in Vermont. 32 V.S.A. § 9773(2). Taxpayer's manufactured signs are tangible personal property. 32 V.S.A. § 9701(7). "Use" is defined for purposes of the use tax to include "any installation, any affixation to real or personal property." 32 V.S.A. § 9701(13). When Taxpayer installs in Vermont a sign it has manufactured, it will owe a use tax based on the sales price of the item. 32 V.S.A. § 9774(c). Taxpayer would not collect sales tax from its customer.

The use tax is imposed on the sales price which Taxpayer would charge if it sold the item, rather than installed it. 32 V.S.A. § 9774(c). The "sales price" must include any charge for delivery. 32 V.S.A. § 9701(4)(A)(iv). The freight charge you mention appears to be a taxable delivery charge.

The taxable "sales price" does not include any charge for installation of the item. 32 V.S.A. § 9701(4)(A)(iii).

Charges for "services necessary to complete the sale" are subject to sales tax. 32 V.S.A. § 9710(4)(A)(iii). Your charges for the engineering stamp and permit fees do not appear to be services necessary to complete the sale. They are charges connected with the installation, and you separately state them as "pass-through" fees to your customer. Therefore, these fees are not subject to sales or use tax. *Cf.*, *e.g.*, Hutcheson v. Ohio Auto. Dealers Assn., 2012-Ohio-3685, ¶¶ 40-41 (Ohio statute imposes sales tax on "Charges by the vendor for any services necessary to complete the sale," but provides that "The charges for notary and title fees, which are separately stated on the customer invoice, are not subject to the tax.").

Once the signs are installed, Taxpayer's charges for maintenance or repair of the signs would be charges for services, not for sales of tangible personal property, and so, not subject to sales or use tax. If Taxpayer purchases or manufactures materials or supplies to be used in the maintenance or repair, Taxpayer would owe a sales tax on the purchased items, and a use tax on the manufactured items. 32 V.S.A. §§ 9701(5), (13); 9771(1), 9773(2).[1]

The facts in this ruling differ from the facts in the Department's Formal Ruling 2013-04. In that ruling, the taxpayer purchased prefabricated sign components. The taxpayer owed no sales tax when it purchased the prefabricated signs, because they were purchased for resale. The taxpayer resold the sign components to its customer or to the customer's installing contractor. At the time of that resale, the taxpayer was required to collect sales tax.

Taxpayer's signs are custom designed and manufactured for the site, and are in most cases affixed to the realty in a manner that would result in damage to the real estate if the sign is removed. Even if removal would not cause damage to the real estate, the custom signs, such as the neon tubing, are designed specifically for the customer's site and might not be reusable at

[1] Please note that as of July 1, 2016, you may elect to pay no sales tax on materials and supplies you purchase for use in improving, altering or repairing real property, and in case of such an election, would need to collect sales tax from your customer on those items. The election is binding for five years. 32 V.S.A. § 9711(b), (d). (Enacted in Sec. 23 of No. 134 of the Acts of the General Assembly of 2016.)

any other site. In these cases, Taxpayer's signs might be treated as real property once installed, though other factors, such as the owner's intent, could come into play in determining whether a sign has become real property.

Generally, property is said to be affixed to the real estate when it cannot be removed without damage to the component, the building, or both. Sherburne Corp. v. Town of Sherburne, 124 Vt. 481, 207 A.2d 125 (1965). The regulations provide that if tangible personal property components are "incorporated into the real property," then the later sale of that property is not subject to the sales tax, even if a portion is separately itemized by the seller in that later sale. Vermont Department of Taxes Sales and Use Tax Regulations, Reg.§ 1.9701(5) -1.

The facts are insufficient to determine whether any particular sign, once installed, is or is not real estate. Whether the sign, once installed, becomes real property, however, has no bearing on the use tax imposed on your installation of the sign, because as noted above, a taxable "use" in Vermont includes "any installation, any affixation to real or personal property."

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 Date
Commissioner of Taxes