

[Date]

[Taxpayer Representative]

[Taxpayer]

[Address]

[Address]

Re: Formal Ruling 16-13

Dear [Taxpayer Representative]

This is a formal ruling for [Taxpayer], regarding the applicability of sales tax to leases of photocopy machines and printers to its customers. This ruling is based upon representations in your letter dated [Date].

FACTS

Your company (Taxpayer) leases photocopy machines and printers to a retail store, which offers self-service copying and printing to its customers.

The retail store will lease from Taxpayer self-service copiers and printers in a “print for pay” lease agreement. Under this agreement, the retail store will pay Taxpayer based on the number of copies made, with no fixed number of copies required. The retail store will make the copiers and printers available to the public for self-service copying and printing.

The retail store has objected to payment of sales tax on its lease payments to Taxpayer, asserting that the machines will qualify as manufacturing equipment, or alternatively, that the retail store is purchasing copies from Taxpayer for resale to the store’s customers.

DISCUSSION

Vermont’s sales tax applies to the rental of tangible personal property. 32 V.S.A. §§ 9771(1), 9701(4)(A). The sales tax is imposed on the sales price. 32 V.S.A. § 9701(5). “Sales price” is the consideration for property or services “sold” or “leased.” 32 V.S.A. § 9701(4)(A). The sales tax does not apply to items which are purchased for resale. 32 V.S.A. § 9701(5).

The retail store asserts that it not leasing the machines, but is purchasing copies from Taxpayer for resale to the store’s customers. Taxpayer, however, never owns or has possession of the copies made by the store’s customers. Therefore, it cannot be said that Taxpayer is selling the copies to the store for resale by the store. What is being taxed is not the transfer of the copies to the retail

store, but is the transfer of the machines to the store for use in its business. The price of the lease is based on the amount of the retail store's use of the machines, which in turn is measured by the number of pages copied or printed by the store's customers.

Alternatively, the retail store asserts that the lease payments are exempt from sales tax because the machines are used in manufacturing.

The sales tax law exempts "machinery and equipment for use or consumption directly and exclusively, except for isolated or occasional uses, in the manufacture of tangible personal property for sale. 32 V.S.A. § 9741(14). "Isolated or occasional use" means 4 percent or less of the time the equipment is operated. *Id.* The regulations define "manufacturing" for purposes of this exemption:

B. "Manufacturing" means:

1. Industrial processing
2. Food processing
3. Mineral extraction
4. Information processing

...

F. "Information Processing" means an integrated series of operations in which information or images are produced and sold as tangible personal property. Information processing includes the production of newspapers, pamphlets, books, computer software (such as "canned" or "off the shelf" software), motion pictures and recorded audio and video tapes, CD ROMs and photographs. Information processing does not include the preparation of reports, documents, or statements, in a transaction in which tangible personal property is not the focus of the transaction.

G. "Manufacturing Process" means . . .

3. For information processing operations, the term "manufacturing process" begins with the first direct steps in creating the text, image, tape or other product, through initial packaging. Excluded from the definition are management and accounting, research and other preparatory activities.

Department of Taxes Regulations, Reg. §§ 1.9741(14) - 2.B, F, G.3.

If the retail store were to use the copiers and printers more than 96 percent of the time to itself produce "text, image, tape or other [tangible] product" (such as paper copies) for sale, the machines would qualify as used in manufacturing products for sale. In that case, the lease payments for the machines would be exempt from the sales tax. *See Vermont Department of Taxes Formal Ruling 2003-01, October 30, 2003.*

As you describe the facts, however, the retail store will not itself be using the copiers and printers to produce a tangible product for sale. Therefore, the retail store is not leasing manufacturing equipment from Taxpayer.

This is also not a sale for resale in the sense that the retail store leases the machines and then re-releases them to its customers. A lease under the sales tax laws is “any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.” 32 V.S.A. § 9701(33). The facts described do not indicate that the store customers ever take possession or control of the machines. Therefore, there is no re-lease of the machines to the store’s customers.

Based on the foregoing analysis of the facts you describe, the lease payments from the retail store to Taxpayer are subject to sales tax.

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