

[Date]

[Taxpayer Representative]

[Taxpayer Representative]

[Address]

[Address]

Re: Formal Ruling 16-15

Dear [Taxpayer Representative]:

This is a formal ruling for your client, [Taxpayer], regarding the applicability of sales tax to the portion of the retail tire price which represents the Federal excise tax on tires. This ruling is based upon representations in your email dated [Date], and our telephone conversation that same day.

FACTS

Your client, [Taxpayer], is a dealer that sells tires at retail. You state that at the time your client receives the tires from the manufacturer, the manufacturer collects the Federal excise tax from your client, and remits the tax to the Federal Government.

Under a prior ruling, the Department advised that when a tire dealer sells a tire to a retail customer, and the dealer states the amount of the Federal excise tax separately on the retail invoice, that excise tax amount is not included in the “sales price” subject to Vermont sales tax. Vermont Department of Taxes, Formal Ruling 2009-03, August 28, 2009.

You have requested a review of that ruling and a new ruling on the issue if necessary.

DISCUSSION

Federal tax law imposes an excise tax “on taxable tires sold by the manufacturer, producer or importer thereof.” 26 U.S.C. § 4071(a). That law also provides as follows:

[I]f the manufacturer, producer, or importer of any tire delivers such tire to a retail store or retail outlet of such manufacturer, producer, or importer, he shall be liable for tax under subsection (a) in respect of such tire in the same

manner as if it had been sold at the time it was delivered to such retail store or outlet.

26 U.S.C. § 4071(b). This means that the Federal excise tax is a manufacturer-level tax. It is collected by the manufacturer at the time of sale to a retail dealer, or paid by the manufacturer at the time of delivery to its own retail outlet. The manufacturer remits the tax to the Federal Government.

Vermont sales tax is imposed on the “sales price” of any item subject to the tax. 32 V.S.A. § 9771. “Sales price” is defined as follows:

(4)(A) "Sales price" means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller . . .

(B) Sales price shall not include:

. . .

(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser

32 V.S.A. § 9701(4). This definition excludes from the “sales price” any taxes legally imposed directly on the consumer and stated on the invoice. Since the Federal excise tax on tires occurs at the manufacturer level at the time of the sale by the manufacturer to the retail dealer, it is not a tax “legally imposed directly on the consumer.” Therefore, the tire excise tax is not excluded from the “sales price” for calculating Vermont sales tax. Instead, the tire excise tax is a “tax imposed on the seller” of the tires, and is included in the taxable sales price, under Subsection 9701(4)(A)(ii), above.

Formal Ruling 2009-03 is superseded by this ruling and will be withdrawn.

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 taxpayer's name and any information which may identify the taxpayer. 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 taxpayer. 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