# 2017 APPEAL DETERMINATIONS
# SUMMARIES

*Determinations of taxpayer appeals are confidential. A summary of a Determination is edited to remove all confidential information. Summaries are not provided for cases in which the facts are so specific that even a summary might identify the taxpayer.*

*Summaries are provided so that the public may see the Department's general approach to the current law. The Department is not bound by a summary with regard to any other taxpayers.*

**ATC #15-103** Income tax; estimated tax assessed when taxpayers failed to file returns

The Department notified taxpayers that they had failed to file an income tax return for three tax years, and requested that taxpayers file the returns within 30 days of that notice, or their tax liability would be estimated and assessed. Taxpayers failed to file within 30 days. The Department estimated their tax liability based on Vermont Department of Labor statistics for average wages for taxpayers' line of work, which is a well-established and reasonable method of estimating income tax liability. The Department also took into account personal exemptions and standard deductions in the calculation. The Department then sent taxpayers an assessment notice for this liability, plus penalties and interest.

Taxpayers appealed the assessment and the Department again requested that they file the missing returns. When they did not file, a hearing was scheduled. Taxpayers twice requested that the hearing be rescheduled so they could have more time to file their returns. Each extension request was granted, but each time, they failed to file. At the hearing, taxpayers' tax preparer was in attendance, and after all testimony was taken, the tax preparer requested more time to file the returns. The hearing officer granted two months to file the returns, but stated that if the returns were not then filed, the case would be determined based on the evidence from the hearing. At the end of the two months, taxpayers requested another 30 days, which the hearing officer granted. When taxpayers failed to file their returns at the end of that 30 days, the Department's assessment of estimated tax, plus penalties and interest, was affirmed.

**ATC #16-07** Sales tax; estimated tax assessed when retailer failed to charge or remit sales tax

On audit, the auditor reviewed the taxpayer's retail sales invoices and other business records, and the sales tax returns which the taxpayer had filed. The business records showed that the taxpayer had failed to charge sales tax on some sales and had received tax for some sales but failed to remit it to the State. The auditor also found records of various business expenditures, but found no record of whether these were for purchases subject to sales tax or were other types of expenditures. She also found records of purchases of business equipment, but no record of whether taxpayer had paid sales tax on those purchases.

A retailer is required to keep sufficient records to show the correct amount of tax was collected on its sales and paid on its purchases. All retail sales are presumed under the law to be taxable, and the taxpayer bears the burden of proving tax was correctly paid or that the sales were tax-exempt, because the taxpayer is the one who has the ability to retain relevant business records as evidence. In the absence of sufficient records, the Department may make reasonable estimates of a taxpayer's tax liability.

The taxpayer asserted that for some of its sales, the Tax Commissioner 30 years earlier had told the taxpayer that its sales of [a type of "amusement"] were tax exempt. A taxpayer may not estop the Department from assessing tax based on oral advice from the Department, because when nothing is in writing, there is no way to tell exactly what questions the taxpayer asked or what answers were given, and whether the advice given was wrong or the taxpayer misunderstood correct advice. In any case, the sales tax law, both then and now, expressly applied to the type of "amusement" being sold by the taxpayer here.

On sales for which the taxpayer received sales tax but failed to report it, underreporting exceeded 20 percent of the tax due. For underreporting in excess of 20 percent, the statute of limitations provides that an assessment may reach back six years instead of the usual three years. For this reason, the audit extended back six years on this audit issue.

For sales and purchases for which the taxpayer had no records to show sales tax was paid, the Department assessed sales tax, plus interest and penalties.

In the absence of any taxpayer records to refute the Department's assessment, the assessment was affirmed.

**ATC #16-15** Sales tax; contractor must pay sales tax on purchase of non-exempt building materials

During an audit, the taxpayer, a construction contractor, provided only a business ledger, but no purchase or sales receipts and no exemption certificates or other records to show whether the taxpayer had correctly paid sales tax on his purchases. For each ledger entry for which the taxpayer did not produce the required evidence, the auditor followed the statutory presumption of taxability and assessed use tax, except for purchases she judged likely to have been taxed, such as convenience store-gas station purchases. Since the taxpayer had filed no returns, the audit extended back seven years.

The taxpayer mistakenly believed that contractors may purchase building materials tax-exempt. The law expressly states, however, that contractors must pay sales tax on items which they purchase for use in improving their customers' real property. The only exception is for materials to be used in construction for a tax-exempt charitable or government entity, if the building is to be used exclusively for the exempt purpose and an exemption certificate is obtained. There was no evidence in this case that the construction jobs were for exempt entities and there were no exemption certificates in evidence.

The auditor used a well-established, reasonable method for determining the taxpayer's liability. She first determined the amount of untaxed purchases estimated from available records for the most recent year. She calculated the amount of those untaxed purchases as a percentage of gross business income for the most recent year. She then applied that percentage to the gross business income for each of the prior six audit years, to project the use tax liability for those years. She did not assess penalties, since this was a first-time use tax audit.

On his income tax return, the taxpayer claimed 25% of his home as a business office. Fuel for residential use is exempt from sales tax. The taxpayer's Green Mountain Power electric bill imposed no sales tax, based on the assumption that it was 100% for exempt residential use. The auditor assessed tax for 25% of the electric bills for the office use.

The burden of proof is on the taxpayer to present sufficient evidence to show the correct amount of tax has been paid and to refute the assessment. A taxpayer's mere assertions are not sufficient to rebut the Department's assessment. The reasons for this rule are (1) the taxpayer is the party in possession of the information necessary to determine the tax liability, (2) the presumption provides an incentive to the taxpayer to keep adequate financial records, and (3) the Government is presumed to act with administrative regularity. The taxpayer presented no valid evidence to refute the assessment and the assessment was affirmed.

**ATC #16-21** Meals tax; estimated tax may not be assessed unless taxpayer's records are first reviewed

Federal Form 1099-K is a report by a credit card company to the IRS, showing the monthly amount of credit card payments made from the credit card company to all vendors. The Department receives 1099-K payment reports from the IRS.

A restaurant-taxpayer's credit card gross receipts as reported on the credit card company's Federal Form 1099-K exceeded what that taxpayer reported on its Vermont meals and alcoholic beverage tax returns. The Department issued taxpayer a standard "1099-K letter," requesting that taxpayer, within 30 days, file an amended meals tax return or explain the discrepancy. Taxpayer responded that it had closed its business. The Department initiated an audit.

If a taxpayer's records are incomplete or unreliable, the Department may estimate the taxpayer's tax liability. The auditor in this case did not review taxpayer's business records because the business had closed. She used a well-established and reasonable method of estimating taxpayer's meals tax liability. Since there was no evidence that the auditor had first reviewed taxpayer's business records, it was not established that the records were incomplete or unreliable. Therefore, there was no rational basis for resorting to estimates of the tax liability. The audit therefore did not meet due process requirements and the assessment was reversed.

**ATC #16- 30** Sales tax; motor vehicle repair shop must pay sales tax on supplies purchased for use in repairs

The taxpayer owned a motor vehicle repair shop. He purchased shop supplies for his business, such as wheel weights, paper towels, hand cleaner, protective gloves, windshield fluid, lubricants, etc., without paying sales tax at the time of his purchases, mistakenly believing that he was buying the shop supplies for resale. Taxpayer then charged his repair customers a flat fee for supplies, and charged sales tax on that supplies fee. For certain services, such as tire change or annual vehicle inspection, the taxpayer charged no supplies fee, regardless of whether paper towels, hand cleaner or other supplies were used.

On audit, the taxpayer was informed that he should be paying sales tax when he purchased his shop supplies, and not charging his customers sales tax on the use of the supplies during repair work. Taxpayer complied and changed his practice.

The auditor assessed the taxpayer for sales tax he had previously not paid when purchasing supplies. The Commissioner affirmed the assessment, based on a Vermont Supreme Court case which held that a grocery store was not "selling" grocery bags to its customers, because there was no true "retail sale" of the bags to the customers. The Court held that a true "retail sale" requires a bargained-for exchange with a price that corresponds to the items bargained for, and that the number of bags transferred to a customer bore no relation to the price of the groceries purchased. The taxpayer's situation here was similar: He did not truly sell shop supplies to his auto repair customers, because there was no separately bargained-for exchange, and customers who were charged a fee all paid the same flat fee. The taxpayer was instead using or consuming the supplies in the course of making the repairs, in the same way a business office uses or consumes (and must pay sales tax on) envelopes, pens and paper clips in the course of its business.

This has been the long-standing rule for purchase of supplies by an auto body repair business (similar to the taxpayer's vehicle repair business). A 1982 statement by the Commissioner provides as follows:

> If you operate a body shop, you must pay Sales Tax to your supplier on the purchase of items used in performing this service on customers' vehicles. These items include paints, bondo, sandpaper, primers, body fillers, etc.

From: Memorandum from Commissioner Hoiska to Auto Dealers, *Auto Body Shops and Garages, Re: Sales Tax Treatment of Tires, Supplies and Auto Parts,* dated December 1982.

A 1986 publication reiterated the Department's position on this issue:

> If your dealership also has a body shop, you must pay a sales or use tax on items consumed in performing services on customers' vehicles, e.g., paints,

> bondo, sandpaper, primers, body fillers, etc. No tax is charged to your customer for the items so consumed.

From: Department of Taxes, *Notice to Auto Dealers & Auto Body Shops*, dated January 1986.

In 2014, the Department issued a formal ruling that an auto repair shop is taxable on the supplies it purchases for use in its repair business. From: Vermont Department of Taxes *Formal Ruling 2014-01* (January 17, 2014).

The taxpayer objected to the penalty assessed, pointing to the fact that he had acted in good faith in assessing sales tax on his shop supplies fee. Under Vermont law "all persons are presumed to know the law," and a mistake of law does not excuse liability. For this reason, and as a matter of fairness to all taxpayers, ignorance of the law is not considered sufficient reason for waiver of taxes, interest or penalty, even when the taxpayer is acting in good faith. The Department assessment was affirmed.

**ATC #16- 31** Meals tax; estimated tax may be assessed where operator fails to maintain adequate records to show the correct amount of tax was collected and remitted;

Sales tax; estimated tax may be assessed when taxpayer has no records to show it paid sales tax on purchases of fixed assets;

Income tax withholding; employer becomes liable for the amount of income tax it failed to withhold and remit for its employees

Meals tax

Vermont's meals tax imposes a tax of nine percent on sales of "taxable meals" and ten percent on sales of "alcoholic beverages." Various towns impose a one-percent local-option meals and alcoholic beverage tax, collected and administered in the same manner as the State-level meals and alcoholic beverage taxes.

A "taxable meal" is "any food or beverage furnished . . . by a restaurant." A "restaurant" includes a "person engaged in the business of catering."

A business is required to keep records sufficient to determine whether it has collected all taxes due on its sales, including "all bills, receipts, invoices, cash register tapes, sales slips" or other original documents which "support the entries in the books of account." If the taxpayer fails to collect any taxes legally due, the taxpayer becomes liable for those taxes. If the taxpayer's records are incomplete or unreliable, the Department may estimate the amount of taxes which the taxpayer should have collected and paid.

In this case, the taxpayer's records were nonexistent for some years and incomplete for other years. The Department was therefore authorized by law to estimate the taxpayer's tax liability. The experienced auditor followed standard audit procedures, and applied a commonly accepted method of reconstructing the taxpayer's taxable receipts, using records from the taxpayer and its suppliers to determine the taxpayer's own purchases of food and alcoholic beverages for use in its catering business, and applying the relative proportions of that food and beverage to the taxpayer's reported business income. This is the same method as that approved by the Supreme Court in the case of *Travia's Inc. v. State, Dep't of Taxes.* The auditor also calculated local option tax for sales in towns with a local option meals and alcoholic beverage tax, using the same methodology.

A methodology chosen by the Department based upon its expertise is presumed correct, valid and reasonable, and the taxpayer who objects to the methodology has the burden of proving that the method was arbitrary or invalid.

Sales and use tax

Vermont imposes a 6 percent tax on sales of tangible personal property. A vendor is required to collect the sales tax from its customers. The vendor must provide the customer with a receipt which separately states the sales tax charged on the sale. If a customer purchases a taxable item and pays no sales tax, the customer becomes liable for compensating use tax in the same amount. Use tax must be reported and paid to the State. Every purchaser bears the burden of proving that sales tax was paid on any item he purchased or that sale was tax-exempt.

The auditor reviewed the taxpayer's purchase records and its income tax depreciation schedules to determine its cost of fixed asset purchases. For any taxable purchase for which the taxpayer had no record of sales tax paid, the auditor calculated a use tax liability.

Income tax withholding

An employer is required to withhold Vermont income tax from wages paid to employees who are subject to Federal income tax withholding, and must report and pay the Vermont withholding to the Department. If an employer fails to withhold or remit the required amount, the required amount becomes the employer's own tax liability.

The auditor reviewed the taxpayer's employee records and discovered employees for whom no tax had been withheld or remitted. She assessed the taxpayer for these amounts.

Legal presumption that assessment is correct

The Commissioner's assessment is presumed correct. The burden of proof is on the taxpayer to present sufficient evidence to refute the assessment. The reasons for this rule are (1) the taxpayer is the party in possession of the information necessary to determine the tax liability, (2) the presumption provides an incentive to the taxpayer to keep adequate financial records, and (3) the courts presume the Department acts with administrative regularity. A taxpayer cannot refute the presumption of correctness with mere assertions that lack supporting records or documentation.

In this case, the taxpayer did not disagree with the audit result or the assessment. Instead, the taxpayer asserted that its CPA had failed to perform his contractual duties and should be liable for the tax assessment. The Department had no legal authority to hear or decide the question of the CPA's liability to the taxpayer, and that question could be adjudicated only by a Judicial Branch court. The Department's assessment was affirmed.

**ATC #17-05** Income tax; short-term capital losses must be taken into account in calculation of Vermont capital gain exemption

The question on appeal was whether short-term capital losses must be taken into account in calculating the Vermont capital gain exemption.

The general rule in Vermont allows the taxpayer to reduce taxable income "with respect to adjusted net capital gain income as defined in 26 U.S.C. § 1(h)" by "either the first $5,000.00 of . . . adjusted net capital gain income; or 40 percent of adjusted net capital gain income from the sale of assets held by the taxpayer for more than three years."

The starting point for the exemption is therefore Federal "adjusted net capital gain income." This is defined in 26 U.S.C. § 1(h) as "net capital gain," with certain further adjustments. "Net capital gain" is defined as "net long-term capital gain" over "net short-term capital loss." 26 U.S.C. § 1222(11). "Short-term" assets are those held for a year or less. 26 U.S.C. § 1222(1)-(4).

In this case, the taxpayers chose the 40 percent option. They asserted that since the 40 percent exemption only takes into account "assets held for more than three years," and since there can be no short-term loss from an asset held for three years, their exemption should have been 40 percent of their net long-term gain, with no reduction for their net short-term loss.

The taxpayers' calculation was erroneous because Vermont law does not allow 40 percent of the "net long-term capital gain" from three-year assets; it allows 40 percent of the "adjusted net capital gain" from three-year assets. And "adjusted net capital gain," by definition, takes into account all short-term capital loss.

The taxpayers' approach was based on their inference that short-term losses are not taken into account when calculating the 40 percent option. Exemptions may not be inferred. No item of income is exempt unless "expressly exempted from taxation by this chapter." 32 V.S.A. § 5819. There is no express exemption for 40 percent of net long-term gain. The express exemption is for a portion of "adjusted net capital gain," which is defined as net of short-term loss.

The Department's denial of the refund request was affirmed.

**ATC #17-16** Sales tax; retailer who fails to collect correct amount of sales tax becomes liable for the uncollected tax; sales tax 5% failure-to-pay penalty is strict liability penalty.

A vendor who makes a taxable sale, fails to collect the sales tax, and fails to obtain an exemption certificate becomes liable for payment of that tax to the State.

When a taxpayer fails to file a return or pay a tax as required by law, the Commissioner may assess the tax, plus interest and penalties.

The taxpayer asserted that since the statute says the Commissioner "may" assess the penalty, the Commissioner should have exercised his discretion in this case and reversed the penalty assessment. The taxpayer stated three reasons for reversal of the penalty.

First, the taxpayer had acquired a retail store from relatives, and assumed his relatives' sales tax collection practices were correct and thus did not review its operation before taking it over. Therefore, he felt he should not bear the penalty for the store's ongoing failure to collect sales tax on certain sales. Second, since the store did not collect the tax from its customers, the taxpayer asserted that having to pay the tax now, plus interest, out of the taxpayer's "own pocket" (that is, not collected from taxpayer's customers), was already sufficient penalty, particularly because there was no "willful neglect" on the part of the taxpayer. Third, the taxpayer noted that sales tax laws governing what is taxable and what is exempt are complex.

Regarding the first argument, reviewing the tax collection practices of a store before buying the store is something a reasonably prudent person would do, even when the store is acquired from a relative. Failure to review the operation is not sufficient reason to reverse the penalty.

Regarding the second argument, the law provides three levels of penalty for failure to pay taxes, with the rates increasing depending on whether the failure to pay was (1) without fault, or (2) due to negligence, or (3) due to fraud. The first level penalty, assessed in this case, is for "failure to pay" without fault, and does not require a showing of negligence, fraud or any other state of mind. It is a strict-liability provision, meaning it is triggered by mere nonpayment. For this strict liability penalty, the Legislature created two penalty rates: 1 percent per month for failure to pay "income tax," and 5 percent per month for failure to pay "all other taxes." (Both rates are capped at a maximum 25 percent penalty.) The two rates indicate that the Legislature contemplated the different types of taxes in setting these two rates, and intended the higher penalty to apply to trust taxes such as the sales tax. A failure to pay sales tax to the State can only mean two things: (1) the merchant did not collect that tax, or (2) the merchant collected the tax and did not pay it to the State. In the second case, there is likely negligence, and since negligence has its own 25 percent penalty, this means that in many cases, the 5 percent no-fault penalty will apply to merchants who did not collect the tax from their customers. The Legislature is presumed to be aware of current law when it enacts new law, and is also presumed to have chosen the words of the statute advisedly. Thus, it is presumed that the Legislature intended, when it created the no-fault penalty, that it could be applied to a merchant who had failed to collect the tax. As a result, the fact that a taxpayer did not collect the tax, and now must pay it out of its own pocket, is not a basis for reversing the penalty. Use of the word "may" provides the Commissioner the ability to take into account unique circumstances, which were not present in this appeal.

Regarding the third argument, while the taxpayer noted the complexity of the sales tax law, a taxpayer is presumed to know the law, and a mistake of law does not excuse liability. For this reason, and as a matter of fairness to all taxpayers, ignorance of the law is not considered sufficient reason to forbear or waive penalties. The Department's assessment was affirmed.

**ATC #17-17** Property tax adjustment; married co-owner of principal residence must include spouse's income in "household income," and calculate property tax adjustment based on only one-half of property taxes, when spouse co-owner does not live in the home and spouses are not divorced or legally separated.

Qualified homeowners are eligible for assistance with the property taxes on their "homestead" (principal residence) in the form of a "property tax adjustment." A property tax adjustment claim is made based on the prior-year property tax in excess of a percentage of prior-year "household income." The allowed adjustment amount is then applied to reduce the upcoming current-year property tax bill.

"Household income" is the "modified adjusted gross income" of every member of the "household." It also includes the income of a claimant's spouse, whether or not the spouse resided in the house in the taxable year. An absent spouse's income is excluded from household income only if the spouses were legally separated or divorced (or if the absent spouse is permanently in a nursing home).

Here, the taxpayer stipulated that she and her husband were living apart at the time she claimed the property tax adjustment, but were not legally separated or divorced. Since there was no legal separation or divorce at the time of the claim, the husband's income must be included in the calculation of household income.

A property tax adjustment is only allowed with respect to the property taxes allocable to the portion of the homestead owned by persons who resided in the house during the year at issue. This means that if the homestead is owned by two people, and one co-owner does not reside there, only the resident owner's half of the property taxes will be taken into account in calculating the property tax adjustment amount. This is so regardless of who paid the property taxes during the year. An exception to this rule applies if the co-owners are legally separated or divorced and the court decree specifies the amount of property taxes the resident spouse must pay in the year at issue.

In the taxpayer's case, her husband did not reside in the house, and there was no legal separation or divorce. Therefore, only the taxpayer's one-half of the property taxes could be taken into account in calculating the property tax adjustment.

The Legislature likely adopted the absent-spouse rules because, without a court-ordered separation or divorce decree, it is not possible to know with certainty how much income, if any, the nonresident spouse is contributing to the household, or what portion of the property taxes, if any, that spouse is paying, either directly or indirectly.

Once the property tax was reduced by 50 percent and the household income was increased by the husband's income, the taxpayer no longer qualified for a property tax adjustment. The property tax adjustment laws provide for a penalty of 10 percent on excessive claims. The Department's assessment for repayment of the property tax adjustment, plus penalty, was affirmed.

**ATC # 17-20** Sales tax;

printing company must pay sales on its purchases of cleaning products used to clean its printing equipment between print jobs; the cleaning products are not exempt "manufacturing supplies" which are consumed during the manufacturing process, but are non-exempt supplies "used for general cleaning of manufacturing property" after the manufacturing process has stopped;

printing company must collect and remit sales tax for the operating manuals it prints and sells to its customers.

<u>General</u>

Vermont's sales tax is imposed on retail sales of tangible personal property. If a person purchases a taxable item and pays no sales tax, the purchaser becomes liable for compensating use tax in the same amount. Use tax must be reported and paid to the State.

Similarly, if a person sells a taxable item at retail and does not collect the tax, the seller becomes liable for the tax.

Every retail sale is presumed subject to tax, and the person objecting to the tax bears the legal burden of proving that the tax was paid, or the sale was exempt.

The Department's regulations are adopted after formal review by the Legislature to ensure that they are not "contrary to the intent of the Legislature." Once adopted, the regulations have the force of law.

<u>Chemicals used to clean ink from printing machines</u>

Sales of certain items for use in "manufacturing" are exempt from sales tax. "Manufacturing" includes printing, bookmaking and publication processes.

Vermont's manufacturing sales tax exemption is narrowly focused on production only. The exemption applies only to machinery, equipment and supplies which are "directly" used in manufacturing or are "an integral part of the manufacturing process." These phrases are synonymous, and are used throughout the correlative regulations. (*See* Vermont Sales and Use Tax Regulations.) The "manufacturing process" is defined to include only the steps in the operation which change the raw material into the finished product.

Most states which impose a sales tax provide an exemption or partial exemption for purchases of machinery and equipment used in manufacturing. The states vary, however, on how broadly they view what constitutes the manufacturing operation. Under the broader "integrated plant theory" manufacturing encompasses all of the operations which are essential to the production. Under the narrower "Ohio Rule," manufacturing includes only those steps in the operation that act on the raw material to change it into the finished product. As the statute and regulations show, Vermont follows the narrower "Ohio Rule."

Under Vermont law, exempt items include "tangible personal property which . . . is consumed or destroyed or loses its identity *in the manufacture of* tangible personal property for sale." The phrase "in the manufacture of" is defined in the regulations as "activities that are an integral part of the manufacturing process." The "manufacturing process" in a printing operation is defined as beginning "with the first direct steps in creating the text, image, tape or other product, through initial packaging."

In the taxpayer's case, the "direct steps" in creating the text are the action of the press on the paper stock or substrate. Cleaning the waste ink after a job is printed and the press is stopped is not part of the "manufacturing process," and therefore does not occur "in the manufacture of" the printed product.

The regulations provide that the fact that a step is a practical necessity does not make it an "integral" or "direct" step in production. Though chemical removal of the waste ink is a "practical necessity" for the taxpayer, this does not mean that the chemical is "used directly" or is an "integral part" of production. Here, removal of the waste ink is not a "direct step in creating the text, image, tape or other product."

The regulations further provide that waste removal is not part of the manufacturing operation unless the waste removal step is integrated into the manufacturing operations. The regulations provide examples of waste removal which is not integrated into the manufacturing operation, and one of those examples is removal of whey in cheese-making, using a "clean in place" system. The residue ink left after print production is analogous to the whey left after cheese production, because the printing process is stopped, the waste ink is removed from the printer, and a new printing process is then begun. The chemicals used to remove the waste ink residue are analogous to the cleaning solutions used to remove the whey. Neither is integrated into production, and neither is exempt.

A recent ruling from the Virginia Tax Commissioner considered similar facts under a statute that provided an exemption for "machinery . . . or supplies, used directly in processing or manufacturing." Virginia's statute was similar to Vermont's, and provided that "used directly" meant "those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process . . . ." The taxpayer manufactured paint, and sought an exemption for its cleaning wash that cleaned a tank after a paint batch was finished, in order to "maintain the color, chemistry and integrity of each batch of paint" and prevent "contamination by a previous product." The Commissioner ruled the cleaning wash was not exempt because it "does not occur during production . . . [but is] washed only after the production of a product batch has ended." As precedence, the Commissioner referred to an earlier Virginia ruling that "a newspaper publisher's use of a press cleaner to clean ink, grease and particles off printing presses . . . after every press run" was not eligible for the manufacturing exemption.

Based on the Vermont statute and regulations, the assessment for this issue was affirmed.

Operating manuals printed for manufacturers

The taxpayer printed operating manuals for certain manufacturer customers, but did not collect sales tax when it sold these manuals to these customers. The taxpayer believed it was not required to collect sales tax on these sales, because the manufacturers would be including the manuals in the price they charged to their customers for their products.

A sale for resale is exempt if the purchaser presents a certificate to the vendor certifying he is purchasing for resale. In this case, however, no resale certificates were presented, and there was no resale of the manuals, under the reasoning in a Vermont Supreme Court case. The case held that a "retail sale" is a bargained-for exchange with a separate price that corresponds to the value of the item bargained for. In that case, *Wetterau, Inc. v. Dep't of Taxes*, the Court held that a grocery store did not "sell" grocery bags to its customers, because the bags were not bargained for and there was "no immediate, direct charge" for the bags. In the taxpayer's case, its manufacturer customers included operating manuals with the purchase of their products; they did not resell the operating manuals to their customers in bargained-for exchanges with a separate price that corresponded to the value of the manuals.

The assessment for this issue was also affirmed.

**ATC #17-44744** Renter-rebate income tax credit; adult student proved establishment of Vermont domicile; denial of rebate reversed.

Vermont provides a “renter rebate” refundable income tax credit of up to $3000.00 for qualified lower-income claimants. To qualify, the claimant’s “household income” may not exceed $47,000.00, the claimant may not be the dependent of another taxpayer under Federal tax law, and the claimant must for the entire calendar year rent in Vermont and be domiciled in Vermont.

In this case, the Department denied the rebate claim of a graduate student, asserting that she did not meet the domicile requirement. It is usually difficult for a student to demonstrate Vermont domicile. On appeal, however, the student (“Claimant”) successfully demonstrated that she was domiciled in Vermont, and her renter rebate was granted.

A person’s domicile is determined by objective factors, such as location of residence, place of employment and business connections, location of items of significant value, where the declarant's family lives, place of voter registration, place of issuance of automobile registration and driver's license, previous permanent residency, and address listed on federal and state income tax returns. A determination of domicile is a fact-intensive inquiry. A person who moves to Vermont in order to attend school here does not thereby show a change of domicile or intent to make Vermont the permanent residence.

Claimant was born in State 1. She attended college in State 2 for two and one-half years, and attended her final two years of college in State 3. After college, she lived and worked in State 4. While she was living in State 4, her parents moved from State 1 to State 3. Claimant then left State 4 and took a job in State 3, the state where her parents now lived. Claimant never lived with her parents in State 3. After Claimant had lived and worked in State 3 for approximately six years, she sold all her possessions except her car, computer, dog and a few other personal possessions and, at age 31, moved to Vermont to begin graduate school. She registered to vote in Vermont, enrolled in graduate school here, opened a bank account here, and rented an apartment here for the full calendar year. Claimant was not a legal or financial dependent of her parents and they did not claim her as a dependent on their tax returns. Claimant used her Vermont address on her Vermont and Federal income tax returns and for her employer’s Federal W-2 wage statements. She no longer had any property or possessions in State 3. Claimant retained her State 3 driver’s license and car registration and a State 3 joint bank account with her mother. Her two adult siblings had been living in States 5 and 6 for many years.

Although Claimant’s State 3 driver’s license, car registration and joint bank account could be indicia of continuing State 3 domicile, the other facts in this case provided sufficient evidence that she was an independent adult who had changed her permanent residence to Vermont.

Based on the evidence, the Department’s denial of the renter rebate claim was reversed.