



State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

[Date]

[Address]

Re: Formal Ruling 19-02

Dear [Deleted]:

This is a formal ruling for [Taxpayer], regarding the applicability of sales tax to transfers to the lessee of damaged leased equipment. This ruling is based upon representations in your letter postmarked [Date], and the enclosed materials.

FACTS

1. [Taxpayer] is an equipment leasing company. You lease various assets, including vehicles, trucks and rail cars, to your customers. These leases are subject to a Master Lease Agreement (MLA). You enclosed a copy of the MLA with your request letter.

2. Under Paragraph 10 of the MLA, the lessee bears the risk of loss for damage to the rented equipment. If you determine that damage results in "Total Loss," the lessee must pay to you all remaining lease payments plus the "Stipulated Loss Value" of the equipment, and you are then "deemed to have conveyed to Lessee all of the Lessor's right, title and interest in" the damaged equipment.

DISCUSSION

You have asked whether the transfer of a total-loss vehicle, truck or rail car to a lessee under your contract, MLA Paragraph 10, would be a sale subject to Vermont sales tax. The answer is that it would be exempt from sales tax.

General rule for taxation of sales

Vermont imposes a sales and use tax on the retail sale of tangible personal property. 32 V.S.A. § 9771(1). A “retail sale” is “any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” 32 V.S.A. § 9701(5). A “retail sale” includes any transfer of title or possession, or both, for a consideration:

§ 1.9701(5)-1. Retail Sale.

The term “retail sale” means a sale for any purpose other than for resale, sublease, or subrent. The term “sale” includes any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor.

Vermont Department of Taxes Sales and Use Tax Regulations (Eff. January 1, 2019) (“Reg.”)

§ 1.9701(5)-1. All receipts for property are subject to sales tax “until the contrary is established, and the burden of proving that any receipt . . . is not taxable . . . shall be upon the person required to collect tax.” 32 V.S.A. § 9813(a).

At the time of “total loss” under your contract, your customer must pay all of the remaining lease payments, plus a “Stipulated Loss Value” for the equipment. You are then “deemed to have conveyed to Lessee all of the Lessor’s right, title and interest in” the damaged equipment. This constitutes a transfer of title and possession for payment by the customer of the remaining lease value and any “stipulated loss” value at that time. This transfer for consideration would therefore be a taxable sale, unless an exemption applies. The transfers you describe, of “vehicles, trucks and rail cars” are exempt, as described below.

Sales tax exemption for casual sales

A “casual sale” is exempt from sales tax. 32 V.S.A. § 9741(5). A “casual sale” is “an isolated or occasional sale of an item of tangible personal property by a person who is not regularly engaged in the business of making sales of that general type of property at retail” 32 V.S.A.

§ 9701(12)(A). Your company is in the business of leasing equipment. Under the definition of “retail sale” quoted above, a lease is a retail sale. The “total loss” clause is included in your general lease agreement. A transfer under the “total loss” clause is therefore part of your regular business activity, and would not be considered an exempt casual sale.

Sales tax exemption for transfers of rail cars

Sales of rail cars are exempt from Vermont sales tax:

9741. Sales not covered

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(30) Railroad rolling stock, including depreciable parts, machinery, and equipment to be installed as a capital asset in such rolling stock, sold for use primarily in the carriage of persons or property. As used in this section, railroad rolling stock shall include locomotives, cabooses, boxcars, tank cars, flatbed cars, maintenance of way equipment, and all other wheeled vehicles used on rails or tracks.

32 V.S.A. § 9741(30). Therefore, your transfer of a rail car to your lessee at the time of total loss is exempt from sales tax.

Sales tax exemption for transfers of motor vehicles

Vermont imposes a separate “purchase and use tax” on sales of “motor vehicles.” 32 V.S.A.

§ 8903. “Motor vehicle” for this tax is defined as:

(21) "Motor vehicle" shall include all vehicles propelled or drawn by power other than muscular power, except farm tractors, vehicles running only upon stationary rails or tracks, motorized highway building equipment, road making appliances, snowmobiles, or tracked vehicles or electric personal assistive mobility devices.

32 V.S.A. § 8902(6); 23 V.S.A. § 4. Purchase and use tax thus applies to sales of trucks or other motor vehicles, but not to sales of rail cars, because rail cars run “only upon stationary rails or tracks.”

Transfer of a motor vehicle which is subject to, or exempt from, purchase and use tax is exempt from sales tax. 32 V.S.A. § 9741(12). Therefore, your transfer of a truck or other motor vehicle to your lessee at the time of total loss is exempt from sales tax.

Purchase and use tax

The purchase and use tax is administered by the Department of Motor Vehicles (DMV), and not by the Department of Taxes. Therefore, we are unable to rule on whether purchase and use tax applies to your transfers of total loss motor vehicles to lessees. It is noted, however, that the purchase and use tax is typically applied at the time a new owner registers the vehicle or obtains a certificate of title. 32 V.S.A. §§ 8903(a), (c); 8911(5). You may wish to apply to the General Counsel’s office at DMV for a ruling on this issue.

Sales tax on transfers of other equipment

You alluded to other types of equipment that you rent, but did not specify any equipment other than vehicles, trucks and rail cars. Without more information, we can only state that, based on the laws outlined above, a transfer of any other type of equipment to your lessee under your MLA Paragraph 10 “total loss” clause will be subject to sales tax, unless you can show that an exemption applies.

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:

Commissioner signed the original ruling on February 8, 2019.

Kaj Samsom
Commissioner of Taxes

Date