Rulings of the Tax Commissioner

July 8, 2013

Re: § 58.1-1821 Application: Retail Sales and Use Tax

Dear *****:

This will reply to your letter in which you seek correction of the retail sales and use tax assessment issued to ***** (the "Taxpayer") for the period July 2007 through June 2010. I note that the Department's assessment has been paid.

FACTS

The Taxpayer is a retailer making sales of medicine and medical supplies. The Department's audit disclosed that the Taxpayer made exempt sales and accepted exemption certificates that were deemed to be invalid. The Taxpayer secured valid replacement certificates and the Department's audit was adjusted. The Taxpayer has also submitted corrected exemption certificates for one customer in its protest and seeks a further revision of the Department's assessment.

DETERMINATION

Virginia Code § 58.1-603 imposes a tax upon every person who engages in the business of selling at retail or distributing tangible personal property in Virginia. Va. Code § 58.1-623 A states that all sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a certificate to the effect that the property is exempt under the Retail Sales and Use Tax Act in Title 58.1 of the Code of Virginia.

Title 23 of the Virginia Administrative Code 10-210-280 A interprets this statute and provides the following:

All sales, leases and rentals of tangible personal property are subject to the tax until the contrary is established. The burden of proving that the tax does not apply rests with the dealer unless he takes, in good faith from
the purchaser or lessee, a certificate of exemption indicating that the property is exempt under the law. The certificate will remain in effect except upon notice from the Department of Taxation that it is no longer acceptable. However, a certificate that is incomplete, invalid, infirm or inconsistent on its face is never acceptable, either before after notice.

Further, subsection B of Va. Code § 58.1-623 provides that “[s]uch certificate shall be signed by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the tangible personal property sold . . . or to be sold . . . in such form as the Tax Commissioner may prescribe.”

The Tax Commissioner previously ruled in Public Document (P.D.) 98-29 (2/20/98) that the absence of an exemption certificate at the time of a sales transaction or the acceptance of an incomplete or invalid exemption certificate indicates that the certificate was never accepted in good faith. Thus, exemption certificates obtained after the start of an audit cannot be accepted "in good faith" and as a result are subject to greater review by the Department. Accordingly, such certificates are acceptable only if they are complete and valid and the Department is able to confirm that a customer's use of the certificate was valid and proper for a specific transaction identified during the Department's audit.

The Taxpayer has submitted a customer's exemption certificate that is correct in all respects with the exception that the customer has inserted its 9-digit federal identification number (FEIN) in the certificate of registration number space rather than the actual 15-digit registration number issued by the Department. In the second exemption certificate, the customer's certificate was correct in all respects with the exception that the customer inserted in the certificate of registration number space a 10-digit registration number that was previously issued by the Department when a dealer is registered for the collection and reporting of the retail sales and use tax. In 2004 the Department began issuing the 15-digit registration number, which is inclusive of the FEIN, in lieu of the previous 10-digit registration number.

The Department's ST-10 resale exemption certificate limits the exempt purchase of tangible personal property to purchases for resale or for other specific classes of tangible personal property. In this instance, the resale exemption certificate listing the FEIN is acceptable. In P.D. 12-155 (10/4/12) reference was made to P.D. 11-8 (1/20/11) in which, for the purpose of that response, the use of the FEIN was not appropriate for use on the Form ST-10 since the certificate was not otherwise complete and a specific 10-digit registration number was in use for the audit period at issue in that response. The Tax Commissioner advised that unlike the situation in P.D. 11-8 the Virginia certificate of registration number includes the FEIN as a part of the registration number. The Tax Commissioner concluded that the use of the FEIN on the resale certificate of exemption Form ST-10 would not invalidate the
good faith acceptance of the resale certificate with the provision that no other deficiencies are found on the resale exemption certificate. Accordingly, in this instance, the use of the FEIN is acceptable since the resale certificate was correct in every other manner. Accordingly, I find cause for adjusting the Department's assessment.

CONCLUSION

The appropriate field audit staff will revise the audit in accordance with this determination. Because the bills are paid in full, a refund of the overpaid portion will be issued to the Taxpayer as soon as practical. The refund will include interest computed in accordance with Va. Code § 58.1-15.

The Code of Virginia sections, regulation and public documents cited are available on-line in the Laws, Rules and Decisions section of the Department's website located at www.tax.virginia.gov. If you have any questions regarding this determination, please contact ***** in the Department's Office of Tax Policy, Appeals and Rulings, at *****.

Sincerely,

Craig M. Burns
Tax Commissioner