

Document Number: 21-74
Tax Type: Retail Sales and Use Tax
Description: Dealer : Returned Merchandise - Easy Return Shipping Labels; Services - Logo Charges Connected to the Sale of Tangible Personal Property
Topic: Appeals
Date Issued: 05-25-2021
May 25, 2021

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

Dear *****:

This will reply to your letter in which you request reconsideration of the Department's determination, issued as Public Document (P.D.) 19-115 (10/4/2019), regarding the retail sales and use tax assessments issued to ***** (the "Taxpayer") for the period June 2012 through May 2015.

FACTS

The Taxpayer is a retailer of clothing and other products that are sold online, through catalogs and in retail stores. The Taxpayer was audited by the Department and assessed sales taxes on untaxed charges billed to customers for easy return labels, shipping and handling, and logo setup fees.

The Taxpayer appealed, contesting the assessment of sales taxes on these untaxed charges. The Taxpayer also contended that the auditor was in error by not accepting a customer's resale exemption certificate and assessing an untaxed sale made to that customer. In P.D. 19-115, the Department determined that the easy return labels did not qualify for the exemption for separately stated transportation charges. The Department also determined that the logo set up fees were not exempt as separately stated charges for alterations to apparel, clothing and garments. The Department, however, gave the Taxpayer another opportunity to provide documentation as to shipping and handling charges and to furnish a copy of the exemption certification in question to the audit staff.

The Taxpayer seeks reconsideration of the Department's determination as to the easy return labels and the logo setup fees. The Taxpayer argues that charges for the easy return labels should be exempt because the products were being shipped out of Virginia for use or consumption. The Taxpayer also continues to assert that logo setup fees should be considered separately stated charges for alterations to apparel, clothing and garments, exempt.

DETERMINATION

Easy Return Labels

The Taxpayer argues that the charges for the easy return labels should be exempt under *Virginia Code* § 58.1-609.10 4 because the returns represent delivery of tangible personal property for use or consumption outside Virginia. *Virginia Code* § 58.1-609.10 4 provides an exemption from the retail sales and use tax for:

Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

"Use" is defined as "the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business." See *Virginia Code* § 58.1-602.

Title 23 of the Virginia Administrative Code 10-210-780 interprets *Virginia Code* § 58.1-609.10 4 and provides:

The tax does not apply to sales of tangible personal property in interstate or foreign commerce. A sale in interstate or foreign commerce occurs only when title or possession to the property being sold passes to the purchaser outside of Virginia and no use of the property is made within Virginia.

The regulation goes on to illustrate transactions in interstate and foreign commerce to which the tax does not apply. In each of the examples provided in the regulation, the sale is for delivery to a purchaser outside of Virginia or for resale and immediate transportation outside of Virginia by a dealer.

The Taxpayer, however, is not a purchaser or reseller in the return transactions at issue. The Taxpayer is the retailer. When the products are returned to the retailer's inventory to be resold, the products are not being "used" in any way that would subject the products to the retail sales and use tax. The exemption cited by the Taxpayer, therefore, is not relevant in the context of the return transactions at issue. As explained in P.D. 19-115, the taxability of the easy return

label charges arises from their direct connection to the sales of the returned merchandise from sales that were originally made to Virginia customers. The Department's position that the charges are taxable was not based on any out-of-state use that may occur after the merchandise is returned.

The Taxpayer also disputes the Department's comparison of the easy return labels to taxable restocking fees in P.D. 19-115. The Department, however, was not asserting that the charges for the easy return labels represented restocking fees. The Department's position was that the charges should be similarly treated because like restocking fees, the easy return label charges are tied to the sale of tangible personal property and should be included in the sales price of tangible personal property that was sold and subsequently returned.

Merchandise Logo Charges

The Taxpayer continues to argue that merchandise logo charges should be treated as separately stated charges for alterations to apparel, clothing and garments exempt from the tax under *Virginia Code* § 58.1-609.5 4. In P.D. 19-115, the Department declined to accept the Taxpayer's broad definition of "alter" and applied a narrower definition that was specifically applicable to apparel. In its request for reconsideration, the Taxpayer continues to put forth a broader definition of "alter" than the Department determined should apply for purposes of this exemption.

In the context of apparel, the term "alter" does not have the broad usage that the Taxpayer asserts. Consistent with the definition from Webster's II New Riverside University Dictionary applied by the Department in P.D. 19-115, the American Heritage Dictionary 99 (2nd Col. Ed.) defines "alter" in the context of garments as "to adjust (a garment) for a better fit." The merchandise logo charges at issue are not for adjustments to clothing to ensure a better fit. Therefore, the charges do not qualify for the exemption.

The Taxpayer goes on to assert that charges for embroidery are not subject to the tax in accordance with P.D. 94-71 (3/18/1994) and P.D. 96-386 (12/23/1996). While this may be true when embroiderers charge for their services, in this case such services are provided in connection with sales of tangible personal property and thus become part of the taxable sales price.

CONCLUSION

For the reasons stated above, I find no basis for reaching a different conclusion that the Department reached in P.D. 19-115 regarding the charges for the easy return labels and the merchandise logo charges. This letter constitutes the Department's final determination as to those issues.

Once the audit staff has completed its evaluation of the additional documentation the Taxpayer was permitted to provide regarding the remaining issues, the assessments will be revised, if warranted. Revised bills will be issued, which should be paid within 60 days of the bill dates to avoid the accrual of additional interest charges.

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

Sincerely,

Craig M. Burns
Tax Commissioner

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Related Documents:

[94-7196-38619-115](tel:94-7196-38619-115)

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