

Private Letter Ruling No. 03-011

**Redacted Version**

Sales Tax

Is the Furnishing of Carpet a Retail Sale of Tangible Personal Property or the Fulfillment of a Construction Contract?

**October 14, 2003**

**Facts**

The taxpayer seeking the ruling is a subchapter S corporation doing business as a carpet seller and installer from a retail location in Louisiana.

In the course of its business this carpet seller/installer executes purchase agreements for carpeting that the seller/installer installs at pre-agreed upon times. The seller/installer's customers assume title to the carpet at the times time of their purchases. Upon completion of the installations, customers receive invoices that separately state the cost of the carpet and the cost of the installation. The invoices also list the tax due upon the purchase prices of the carpet as well as the installation. The seller/installer makes wholesale purchases of carpet and padding upon which its pays sales tax to wholesalers.

**Issue**

Shall this carpet seller/installer be treated, for sales tax purposes, as a seller of tangible personal property who will be required to collect tax on sales, and be entitled to claim credit for taxes paid on purchases of tangible personal property for resale, or alternatively, be treated as a real property contractor and seller of immovable property who will be required to pay the sales or use tax on purchases of tangible personal property that the business will resell as immovable property.

**The Law**

R.S. 47:302(A)(1), 321(A)(1), 331(A)(1), and the sales tax ordinance of the Louisiana Tourism Promotion District levy the sales tax on the "sales price of each item or article of tangible personal property when sold at retail in this state ..."

R.S. 47:301(13)(a) defines the term "sales price", in pertinent part, as follows:

"Sales price' means the total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing which shall not exceed the legal interest rate and a service charge not to exceed six percent of the amount financed, and losses; provided that cash discounts allowed and taken on sales shall not be included, nor shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling or repairing property sold."

R.S. 47:301(16)(a) defines “tangible personal property” as personal property that can be seen, weighed, measured, felt, touched, or is perceptible to the senses. The Louisiana Supreme Court has ruled that “tangible personal property” is equivalent to corporeal movable property as defined in Article 471 of the Louisiana Civil Code. The Louisiana Civil Code describes corporeal movable property as things that physically exist and normally move or can be moved from one place to another.

The term “sale at retail” is defined by R.S. 47:301(10)(a)(i), in pertinent part, as “a sale to a consumer or to any other person for any purpose other than for resale as tangible personal property ...”

R.S. 47:306(B)(2), regarding the sales tax collected by manufacturers, wholesalers, jobbers, and suppliers on sales to dealers of tangible personal property for resale by the dealers, provides that “(t)he amount paid by dealers to manufacturers, wholesalers, jobbers, or suppliers shall be advance payment of the Louisiana sales tax which the dealer is required to collect upon the sale at retail, and the advance payment is required only as a means of facilitating collection of the sales tax.” R.S. 47:306(B)(3) further provides, in this regard, as follows:

“In making their returns to the collector, dealers who have paid advance sales tax shall deduct from the total tax collected by them upon the retail sale of the commodity the amount of tax paid by them to manufacturers, wholesalers, jobbers and suppliers during the period reported, provided tax paid invoices evidencing the payment are retained by the dealer claiming the refund or credit.”

### **Analysis**

In cases where the facts surrounding transactions for the sale and installation of carpet are clear, the application of the sales and use tax law to those facts is also clear.

When dealers sell to consumers carpet and underpadding that is movable or personal property at the time of sale, the transactions are “sales at retail” of “tangible personal property”. The sales tax levied by R.S. 47:302(A)(1), 321(A)(1), 331(A)(1), and the sales tax ordinance of the Louisiana Tourism Promotion District must be collected on the total “sales price” of this tangible personal property. Separately stated and optional charges for the installation of the carpet and underpadding are excludible from the taxable “sales price” of the property. The wholesale purchases by that dealer of carpet and underpadding that the dealer will use for no purpose other than to sell as tangible personal property are not “sales at retail”. Accordingly, any state sales taxes that the dealer remitted to manufacturers, wholesalers, jobbers, and suppliers his/her purchases of the carpet and padding will be considered advance sales taxes, and will be eligible to be deducted on the dealer’s state sales tax return, as provided by R.S. 47:306(B)(3).

When a dealer in carpet and padding, through the process of installing or laying the carpet and padding, renders the property immovable before the dealer sells the property to the customer, the sales or use tax is payable in a significantly different way. When the carpet and padding is immovable at the time of its sale, the dealer will be considered a contractor with respect to those sales. In such cases the transactions with the contractor’s customers are not sales of tangible personal property, and the sales tax is not collectible on the sales. The dealer/contractor will have acquired the carpet “other than for resale as tangible personal property” so the transactions in which the dealer/contractor acquired the carpet and padding are “sales at retail” to the

dealer/contractor. Any tax that the dealer/contractor's suppliers collected from the dealer/contractor on the purchases of carpet and padding are not considered advance sales taxes, and will not be eligible to be deducted on the dealer's state sales tax return, as provided by R.S. 47:306(B)(3). In cases where the dealer/contractor's suppliers fail to collect the state sales tax on the sales to the dealer/contractor, the dealer/contractor will be required to remit use taxes directly to the Louisiana Department of Revenue.

### **Ruling**

The person who requested this Private letter Ruling indicated that the carpet seller/installer's customers assume title to the carpet and padding purchased from the carpet seller/installer at the time that purchase agreements are signed, and before the carpet is installed by the carpet seller/installer. In the fact scenario that was provided to the department, the carpet seller/installer will be considered a seller of tangible personal property, and will be required to collect the sales tax on all "sales at retail" to consumers, as explained above. Separately stated and optional charges for the installation of the carpet and underpadding are not taxable. Any state sales taxes that the carpet seller/installer remits to manufacturers, wholesalers, jobbers, and suppliers on its purchases of the carpet and padding will be considered advance sales taxes, and will be eligible to be deductible on the carpet seller/installer's state sales tax returns, as provided by R.S. 47:306(B)(3). Should the department audit this business and determine that the facts surrounding the carpet seller/installer's transactions vary materially from those that were presented in the request for the Private Letter Ruling, this ruling will not be applicable.

The department is aware that conflicts sometimes arise between carpet seller/installers and carpet consumers over responsibility for the payment of sales taxes on the flooring materials. The conflicts typically arise because the consumer believes that he or she has entered into a contract with a dealer/contractor, and that the responsibility for the payment of sales or use taxes on the flooring materials lies with the dealer/contractor. Those types of conflicts can be avoided by clearly stating the terms of sale in the contract or sales documents, including whether the flooring materials are sold as movables or immovables, and which of the parties to the contract is responsible for payment of sales or use taxes.

Questions or comments about this matter can be directed to the department's Policy Services Division at (225) 219-2780.

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Secretary

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