

October 31, 2008

**TANGIBLE PERSONAL PROPERTY PURCHASED BY A SERVICE PROVIDER**

**Issue:**

Can persons engaged in the business of providing services purchase tangible personal property for resale when the tangible personal property is provided to the customer as an incidental part of the service?

**Conclusion:**

When sellers are determined to be principally engaged in the business of providing services, any tangible personal property used incidentally in providing such services is not resold in the normal course of the seller's business and, therefore, cannot be purchased by the service provider tax-free for resale. In addition, the total amount charged by the service provider for services **and** any tangible personal property transferred incidentally is viewed as one transaction, regardless of the fact the two components may be contracted for separately.

**Analysis:**

Neb. Rev. Stat. §77-2701.34 and Nebraska Sales and Use Tax Regulation 1-013.01 define "Sale for Resale" as a sale of property to any purchaser who is purchasing such property for the purpose of reselling it in the normal course of his or her business. Property which is resold by the purchaser in the normal course of his or her business may be purchased tax-free. Property which is not resold by the purchaser in the normal course of his or her business cannot be purchased tax-free.

In making the determination whether a transaction involving both the performance of a service and the transfer of tangible personal property is principally the sale of a service, the transaction must be reviewed using the "incidental-to-service" test outlined below. The "incidental-to-service" test looks objectively at the entire transaction in determining whether a transaction is principally the provision of a service or the transfer of tangible personal property. If the rendition of services is the principal object of the transaction, then any tangible personal property transferred is deemed to be incidental to the services provided. Consideration is given to the following six factors:

1. The object sought by the buyer;
2. The seller's type of business;
3. Whether the tangible personal property was provided as a retail enterprise with a profit-making motive;
4. Whether the tangible personal property could be sold without the service;
5. The extent that the services have contributed to the value of the tangible items transferred; and
6. Any other factors relevant to the particular transaction.

The following example is provided to demonstrate the application of the above factors to the sale of services.

**Example:**

Data processors perform nontaxable services such as entering and retrieving information, compiling and producing records of transactions, and maintaining information. In the performance of these services the data processor may also furnish reports, forms, invoices, or statements to the customer, the customer's clients, or the customer's cardholders. By applying the above factors to transactions involving the sale

of data processing services, the service component is deemed to be the principal element based on the following factors:

Factor #1 – Customers contract with data processors to retrieve and summarize transaction data, compute balances, and sort and sequence the raw data furnished directly or indirectly by the customers. The processed information may then be furnished to the customer or the customer's clients or cardholders electronically or on paper.

Factor #2 – Data processors are in the business of performing a full range of processing services for customers and do not hold themselves out to the public as sellers of tangible personal property.

Factor #4 – Without the services provided by the data processors, the printed material has no value to the customer.

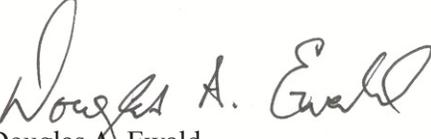
Factor #5 – The statement paper and envelopes transferred have little or no value to the customer. The value to the customer is in the processed information on the paper.

The weight of the service element in the above factors indicates the transaction is principally for the provision of a service and any tangible personal property, such as statement paper and envelopes, furnished with the service is deemed to be incidental to the service. The data processor is the consumer of the statement paper and envelopes and cannot purchase these items tax-free for resale.

The conclusions of this ruling are also currently addressed in the following Nebraska Sales and Use Tax Regulations with regard to tangible personal property consumed by various service providers:

Hotels, Lodgings, and Accommodations	Reg-1-046.03
Barber and Beauty Shops	Reg-1-047.01
Sewer and Water	Reg-1-066.14
Veterinarians and Veterinary Medicines	Reg-1-078.03
Documents	Reg-1-080.03
Building Cleaning and Maintenance	Reg-1-098.07
Motor Vehicle Services	Reg-1-099.04
Pest Control Services	Reg-1-100.05

APPROVED:

  
Douglas A. Ewald  
Tax Commissioner

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