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Pennsylvania Sales and Use Tax
No. SUT-04-004
Sale, Installation or Servicing of
Commercial Refrigeration Equipment

ISSUE

Is the sale and installation or servicing of commercial refrigeration equipment in supermarkets subject to sales and use tax?

CONCLUSION

The sale and installation or servicing of commercial refrigeration equipment in supermarkets is subject to sales tax if the equipment has a self-contained chiller unit. The sale and installation or servicing of commercial refrigeration equipment in supermarkets is not subject to sales tax if the equipment is connected to a remote chiller unit. In this situation the installer or service provider is required to pay use tax on all equipment installed or parts provided.

FACTS

The Taxpayer is in the business of the sale, installation and servicing of commercial refrigeration equipment. Supermarkets operators are its primary customers, and a typical product is a self-service refrigerated display case. The Taxpayer purchases refrigeration equipment from the equipment manufacturer, at auction, or from third party vendors. The Taxpayer then sells the equipment to the supermarket operator. The Taxpayer may also install the equipment in supermarket locations. The equipment that the Taxpayer sells and installs self-contained and remote refrigerated display cases, pre-fabricated modular walk-in coolers and freezers, evaporator coils, remote single compressor refrigeration condensing units, remote multiple compressor condensing units, remote air-cooled refrigeration condensers, ice machines, and non-refrigerated display units. In addition to setting the equipment in place in a supermarket, the Taxpayer often installs piping to connect refrigerated display cases or walk-in units to either a remote single or multiple compressor condensing units. The piping typically runs in pre-existing conduits in the floor of the supermarket. Finally, the Taxpayer services and repairs the same type of equipment that it installs.

The Taxpayer installs refrigeration equipment both at the beginning of lease for supermarket customers, and for supermarkets that are remodeling during the term of a lease. In the supermarket industry, remodeling occurs on average every seven years. Upon remodeling or at the end of the supermarket operator's lease, the equipment is removed and retained by the Taxpayer for resale or retained by the supermarket operator for use in another location. The refrigeration equipment that the Taxpayer sells and installs, both new and used, is usually purchased from the Taxpayer by a supermarket operator that leases space from a landlord; the operator does not hold title to the real estate. The title to the refrigeration equipment, however, typically remains with the supermarket operator. Industry practice is that the real estate lease generally provides that the lessee is required to remove all equipment at the end of the lease, but any permanently attached structures

remain with the real estate and become the property of the lessor. The refrigeration equipment falls into the first category and the lessee is generally required by the lessor to remove the refrigeration equipment at the end of the lease.

The remote condensing units are typically installed on the roof by the Taxpayer or inside the store. At the end of a lease, the condensing units are also generally removed by the Taxpayer. The Taxpayer only sells and services equipment that is typically removed at the end of a lease.

DISCUSSION

The issue for resolution is whether the sale and installation or servicing of this commercial refrigeration equipment is a taxable sale at retail or a nontaxable construction contract. Regulation Section 31.11 provides, in pertinent part, as follows:

The following words and terms, when used in this section and §§ 31.12—31.16, have the following meanings, unless the context clearly indicates otherwise:

Construction contract—A contract, whether lump sum, cost plus, unit price or time and materials under which a person agrees to perform construction activities.

Construction activities—An activity resulting from an agreement or contract under which a contractor attaches or affixes tangible personal property to real estate so as to become a permanent part thereof. Construction activities also include the service of repairing real estate even though tangible personal property is not transferred by a contractor in conjunction with the repairs which he makes. In the absence of satisfactory evidence to the contrary, the following items are presumed to become a permanent part of real estate:

Air, chiller

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Condenser, heating and air conditioning

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Cooler, display (central cooling system)

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Refrigerator, walk-in

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Contractor—A person engaged in performing a construction contract or construction activities. The term includes prime contractors and subcontractors.

Sales activities—An activity resulting from an agreement or contract under which a contractor transfers tangible personal property or performs services upon tangible personal property belonging to another person and installs the property so as not to become a permanent part of the real estate. In the absence of satisfactory evidence to the contrary, the following items are presumed not to become a permanent part of real estate:

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Cooler, display (unit self-contained)

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This regulation clearly states that a self-contained cooler display unit is presumed to be tangible personal property and a cooler display unit integrated into a central cooling system, and chillers and condensers are presumed to become a permanent part of the real estate. Although there are situations where a cooler display unit integrated into a central cooling system, chillers and condensers may be removed without damaging the tangible personal property or the real estate, the purpose of the presumption in the regulation to provide a single rule in all cases, regardless of the differing circumstances in various situations.

The Department, including the Bureau of Audits, has taken the position that a cooler display unit integrated into a remote cooling system, chiller, condensers and other parts of the remote cooling system are considered to become a permanent part of real estate. There is no requirement that the cooling system be completely centralized, the important factor is that the cooling system is remote from the display units. A self-contained cooler display unit is considered to be tangible personal property.

As a result, the seller of a self-contained cooler display unit may purchase the unit free of tax claiming the resale exemption. The repairer of a self-contained cooler unit may purchase the repair parts free of tax claiming the resale exemption. Both the seller of the unit and the repairer must charge sales tax on the total purchase price charged to the supermarket operator.

The installer of a cooler display unit integrated into a remote cooling system and the cooling systems themselves are construction contractors. These installers are required to pay sales or use tax on their purchase of any property installed. Likewise, a repairer of such units and systems are required to pay sales or use tax on their purchase of any property installed. The installer or repairer does not charge the supermarket operator sales tax on these transactions.