

Declaratory Order 2021-02

Request for Ruling Regarding the Application of an Exemption from Sales and Use Tax

Request for Ruling

The Taxpayer requested a ruling as to whether the fire hydrant fee it charges for private hydrants located on residential premises is exempt from Rhode Island sales and use tax.

Facts

Unless otherwise noted, the facts set forth below are taken from the facts presented in the Ruling Request received by the Tax Division on April 21, 2021.

The Taxpayer is a corporation that is subject to the supervisory and regulatory powers of the Public Utilities Commission (“PUC”). The Taxpayer provides water supply services through metered sales in certain communities within the State. The Taxpayer is also responsible for operating and maintaining the water supply system. The Taxpayer operates in a manner similar to private business enterprises where the costs of providing goods or services to the general public, the support for a capital improvement program, and the funding of an infrastructure replacement program are financed or recovered through user charges approved by the PUC.

The Taxpayer promulgated a rate schedule, approved by the PUC, that charges consumers for public fire protection services to both public and private hydrants. Hydrants exist on both residential premises and commercial premises. These fire hydrant charges (“Hydrant Fee”) are a shift in the capacity cost of the Taxpayer’s water infrastructure to private systems from public systems to more equitably distribute those costs. Hydrants are owned and maintained by the property owners and the charges do not relate to those activities. The Hydrant Fee for private fire service is a fixed quarterly charge that is billed in addition to rates that vary with system service size.

Public fire protection services from the water utility include the provision of standby services including the treatment, storage, and pumping capacity plus the transmission and distribution water mains to transport the water. The Hydrant Fee as well as all water rates and fees are set to pay for the service that they provide. The Hydrant Fee, which customers with hydrants on their private property pay for, is a dollar value which is an allocation of the fire protection capabilities of the Taxpayer’s water supply system.

The majority of the costs of providing fire protection is associated with providing and maintaining a distribution and storage system with the capacity to deliver sufficient quantities of water to fight fires. If a water department only needed to provide water for domestic use, storage tanks and pipe sizes in the system could be significantly reduced.

Ruling Requested

The Hydrant Fee for private hydrants located on residential premises is not subject to sales and use tax because the delivery of tax-exempt tangible personal property is not taxable.

Pertinent Local Statutory and Regulatory Law

Under the Rhode Island General Laws, “a tax is imposed upon sales at retail in this state...at the rate of [seven percent (7%)] of the gross receipts of the retailer from the sales or rental charges....” R.I. Gen. Laws § 44-18-18. A comparable excise tax “is imposed on the storage, use, or other consumption in this state of tangible personal property...purchased from any retailer at the rate of [seven percent (7%)] of the sale price of the property.” R.I. Gen. Laws § 44-18-20. The use tax is a complement to the sales tax and is intended to prevent tax avoidance and an unfair burden being placed on local retailers who must compete with retailers in other states who are exempt from the sales tax. *Great Lakes Dredge & Dock Co. v. Norberg*, 369 A.2d 1101, 1106 (R.I. 1977).

A “retail sale” or “sale at retail” is defined as “any sale, lease, or rentals of tangible personal property...or services as defined in § 44-18-7.3 for any purpose other than resale, sublease, or sub rent in the regular course of business.” R.I. Gen. Laws § 44-18-8. Certain transactions are specifically defined to be presumptively taxable retail sales of property. Among these transactions are “the furnishing and distributing of electricity, natural gas, artificial gas, steam, refrigeration, and water.” R.I. Gen. Laws § 44-18-7(8).

For purposes of computing the tax, a retailer’s “gross receipts” are “the total amount of the sale price, as defined in § 44-18-12...of the retail sales of retailers.” R.I. Gen. Laws § 44-18-13. The “sale price”, in turn, is defined as:

the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

...

(iii) *Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*

(iv) *Delivery charges, as defined in § 44-18-7.1(i).*

R.I. Gen. Laws § 44-18-12(a). (Emphasis added).

“Delivery charges” are statutorily defined to mean “charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to: transportation, shipping, postage,

handling, crating, and packing.” R.I. Gen. Laws § 44-18-7.1(i). The regulations emphasize that delivery charges are included in the sales price of property if the property sold is taxable, but if the property sold is exempt, delivery charges are not subject to sales tax. 280-RICR-20-70-15.5(A) (Delivery Charges).

The obligation to charge, collect, and remit the sales tax to the State is on retailers, R.I. Gen. Laws § 44-18-18; § 44-18-19, and the obligation to declare and pay the use tax on untaxed purchases that were taxable is on the consumer. R.I. Gen. Laws § 44-18-21. A “retailer” is defined as “[e]very person engaged in the business of making sales at retail....” but specifically includes others within the statutory definition of a retailer. R.I. Gen. Laws § 44-18-15. R.I. Gen. Laws § 44-18-15(a)(1).

Under R.I. Gen Laws § 44-18-25, all gross receipts are presumed to be subject to sales and use tax “until the contrary is established to the satisfaction of the tax administrator. The burden of proving to the contrary is upon the person who makes the sale and the purchaser, unless the person who makes the sale takes from the purchaser a certificate to the effect that the purchase was for resale.” R.I. Gen. Laws § 44-18-30 provides a list of specific exemptions to the sales and use tax in Rhode Island.

Pursuant to R.I. Gen. Laws § 44-18-30(28), “the sale...storage, use, or other consumption in this state of water furnished *for domestic use by occupants of residential premises*” is specifically exempted from sales and use tax. (Emphasis added). Rhode Island regulations emphasize that furnishing utility services to residential customers for domestic use are not subject to sales tax. 280-RICR-20-70-57.6 (Television Service, Telegraph, Water, Gas, Electricity, and Steam). Similarly, “the sale to, and...the storage, use, or other consumption by, this state, any city, town, district, or other political subdivision of this state” is also expressly exempted from sales and use tax. R.I. Gen. Laws § 44-18-30(8).

Discussion

The Taxpayer is a retailer since it engages in the business of making retail sales of water to consumers. As such, the Taxpayer is obligated to charge, collect, and remit tax on all taxable sales and on any service charges that must be included in the gross receipts derived from such sales. However, since the Hydrant Fee is a charge for operating and maintaining the Taxpayer’s water infrastructure and relates to the sale of water that is exempt, the fee is also not subject to tax.

The consumption of water by persons for domestic use in residential premises is tax-exempt by statute. R.I. Gen. Laws § 44-18-30(28). The Taxpayer does not own or maintain private fire hydrants; the private property owner does. Accordingly, following the reasoning set forth in 280-RICR-20-70-15.5(A), if the sale price of the property is not taxable, any delivery charges related to that sale would not be subject to the sales tax. Here, a service charge imposed by the Taxpayer for maintaining an infrastructure for use by private fire hydrants on residential premises is not subject to the tax.

Ruling

Based on the facts presented, the Hydrant Fee charged by the Taxpayer for private hydrants located on residential premises is not subject to the sales and use tax.

This ruling is limited to the facts stated herein and may be relied upon by the requesting party and shall be valid unless (1) expressly revoked, (2) the applicable statutory provisions of law are amended in a manner that requires a different result; (3) the underlying facts described herein materially change; or (4) a decision on point has been issued by the Rhode Island or Federal courts.

Neena S. Savage
Tax Administrator
December 8, 2021