

DUPACO COMMUNITY CREDIT UNION (TRU) (2017)

Topic Codes: C266 Computer; C366 Consumer's Use Tax

Document Reference: 17300002

January 30, 2017

Todd Hendricks
RSM US, LLP
201 1st St. SE, Ste 800
Cedar Rapids, IA 52401

RE: Dupaco Community Credit Union
Docket No. 2016-300-1-0220
Retail Sales Tax Protest

Dear Mr. Hendricks:

The Review Unit of the Iowa Department of Revenue has reviewed the protest, facts and evidence present and the laws which apply to the protest referenced above. This letter states the Review Unit's position in this matter.

The first issue in the protest is whether certain services which Dupaco Community Credit Union (Dupaco) hires out for are considered nonenumerated services. You claim that the services provided by Refinery Services are exempt from sales tax because they are design services and because the final product is delivered electronically to the taxpayer. The information provided shows that the services include design services and services in conjunction with design services. Design services are a nonenumerated service. In addition, Iowa Code § 423.3(67) exempts from tax, "[t]he sales price of a sale at retail if the substance of the transaction is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics." The Department concurs that both the design services and the delivery are exempt from tax. Therefore, the Department agrees that the taxpayer is due an additional refund of \$26,148.07 plus applicable interest.

The second issue in the protest concerns whether software was delivered electronically with no tangible form of media. According to the protest, you claim that the products purchased from Harland Financial and SHI International were downloaded electronically and should be exempt from tax under Iowa Code § 423.3(67) referenced above. In the protest, you state that information technology specialists from Dupaco reviewed the invoices in question and verified that the items were downloaded electronically. However, unconfirmed information from Dupaco employees is not sufficient documentation to verify that the software in question was actually electronically downloaded and that no tangible form of media was received. Therefore, the protest of this issue must be denied.

The third issue concerns whether paper trays, supply kits and document feeders are considered computers or computer peripherals. According to the information you provided, there are four invoices under protest. You assert that the items under protest should be considered computers or computer

peripherals and should be exempt from tax. Iowa Code § 423.3(47)“a” provides exemptions for the following, in relevant part:

The sales price from the sale or rental of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment if such items are any of the following:

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

Rule IAC 701—18.58(1), which was written, in part, to implement that code section, defines computers as the following:

...stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers.

The paper trays and document feeder are additional, separate attachments. They are not considered stored processing equipment and they are not attached to a computer via a signal cable or any other communication medium that serves the purpose of a signal cable. Neither the paper trays nor the document feeder meet the definition of either a computer or a computer peripheral. No additional refund will be issued for either of these items.

A scan kit was purchased through Managed Solutions Group. The scan kit consists of consumables that wear down naturally during normal use, including rollers and a cleaning kit. The items included in the scan kit are considered supplies and are subject to tax.

The final issue in the protest is whether building materials and services were related to new construction. Tax exemption statutes must be strictly construed with all doubts resolved in favor of taxation and against exemption. *Heartland Lysine, Inc. v. Department of Revenue and Finance*, 503 N.W.2d 581, 588 (Iowa 1993). The Department cannot justify issuing a refund for the items in question without sufficient documentation to verify each service was performed in new construction or relation to construction.

There are fourteen invoices under protest for this issue. Nine of the invoices relate to signage. Sign construction and installation is an enumerated service, subject to tax under rule IAC 701—26.75. That rule reads:

On or after April 1, 1992, the total gross receipts for the construction and installation of signs are subject to sales and use tax. For purposes of this rule, “sign” means notices erected and maintained for the purpose of providing information, notices, markers, advertising of products or services. A sign includes, but is not limited to, billboards, indoor or outdoor sign devices, and any structure erected and maintained for the purpose of conveying information.

Five of these nine invoices are related to sign construction and installation connected to a new Dupaco Credit Union constructed in 2015. Therefore, the Department agrees that the taxpayer is due an additional refund in the amount of \$3,719.10 plus applicable interest for these five invoices.

According to the protest, you assert that the four remaining invoices claimed under signage were associated with remodels at two different locations. You acknowledge that there are no construction contracts or any separate contract to verify that the locations were remodeled. No other type of documentation has been provided to verify that either of the two locations underwent a remodel. Consequently, the sign construction and installation are subject to tax under rule IAC 701—26.75.

Two invoices claimed under services related to new construction are for the installation of cabling. Generally, the installation of cabling is considered electrical or electronic installation and is subject to tax under rule IAC 701—26.16, which reads, in relevant part:

Persons engaged in the business of repairing or installing electrical wiring, fixtures, switches in or on real property or repairing or installing any article of personal property powered by electric current are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. . . . “Installation” shall include affixing electrical wiring, fixtures or switches to real property, affixing any article of personal property powered by electric current to any other article of personal property, or making any article of personal property powered by electric current operative with respect to its intended functional purpose. . . .

On and after July 1, 1984, the services of electronic repair and installation are subject to tax. “Electronic” repair and installation is that which deals with the installation of semiconductors (e.g., vacuum tubes, transistors, or integrated circuits) or with the installation or repair of machinery or equipment which functions mainly through the use of semiconductors. It is this installation or repair of semiconductors or of machines functioning mainly by the use of semiconductors which distinguishes “electronic” installation and repair from “electrical” installation and repair.

Again, you acknowledge that there is no separate contract or construction contract to verify any remodel or that the cabling installation is somehow connected to a remodel. Therefore, the installation of cabling is subject to tax under rule IAC 701—26.16.

One invoice claimed under services related to new construction is for the purchase and installation of new parking lot lights. Electrical installation is subject to tax under rule IAC 701—26.16, referenced above. No documentation has been provided to support that the parking lots were installed in relation to new construction. Consequently, the installation of parking lot lights is subject to tax under this rule.

Another invoice listed under services related to new construction claims to be an upgrade to energy efficiency lighting. The invoice reads “Quoted amount 240 @ \$55/ea.” Based on the invoice, the Department is unable to determine whether the charge is for materials or labor or both. No documentation has been provided to verify that any potential installation charge was related to a remodel. Electrical installation is subject to tax under rule IAC 701—26.16. Consequently, the protest of this issue must be denied.

The last invoice claimed under services related to new construction is for the installation of a new water heater which you claim is related to a remodel and exempt under rule IAC 701—219.13(2). There is no

construction contract to verify the remodel or that the installation of the water heater was done in relation to a remodel. Rule IAC 701—219.13(2) reads, in relevant part:

Repair is synonymous with mend, restore, maintain, replace and service....

Nonexclusive examples of repair situations are as follows:

g. Replacing or repairing a broken water heater, furnace or central air conditioning compressor.

Without sufficient documentation to verify that the water heater installation is exempt from tax, the purchase and installation of the water heater is considered taxable under this rule. Therefore, the protest of this issue must be denied.

In summary, the Review Unit denies in part and grants in part the protest based on the information provided. The adjustments referenced above result in an additional refund in the amount of \$29,867.17 plus applicable interest. Please respond in writing by March 1, 2017 whether you agree with the Review Unit's position. If you agree, or choose not to pursue the protest, your letter will serve as authority for the Review Unit to request the Director to close the protest.

If you disagree with the Review Unit's position in this matter, the Review Unit requests that you identify those areas of disagreement and provide documentation to support your position. Upon receipt of your letter, the Review Unit may file an Answer, which will initiate the process for an administrative hearing on your protest. A department attorney will be assigned to your protest at that time.

If no response is received by March 1, 2017, the Review Unit will construe this inaction as failure to pursue the protest and will request dismissal of the protest pursuant to department rule 701 IAC 7.11(2).

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

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