

Policy Letter; Timber Mat Rental; September 12, 2016

Topic Code: R174 Rental of Tangible Personal Property

Document Reference: 16300045

Sent via email

September 13, 2016

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Timber Mat Rental

Dear [REDACTED]:

The Iowa Department of Revenue ("Department") has received your email regarding the taxability of timber mat rentals.

Facts As You Provided:

You work for [REDACTED], a company that rents timber mats to energy companies used to create temporary access roads to work locations on right of ways.

You asked the following questions: (1) Is trucking the mats into Iowa taxable? (2) If you unload the mats onto the ground, the customer uses them to create an access road, and then you charge the customer a rental charge per day they have possession of the mats, which activities are taxable and to whom? (3) If you truck the mats to the location, unload them, and create the access road, and then charge the customer the daily rental charge, who, if anyone is responsible for sales tax? (4) If you restore the right of way to its original state (earthwork, seeding, etc.) after the pipeline work is done, is that service taxable? (5) If you purchase or rent a piece of equipment and then re-rent that equipment as a short-term rental to a customer, which transactions are taxable? And (6) is the purchase of aggregate taxable?

Analysis:

1) Is trucking mats into Iowa taxable?

Yes, renting timber mats and delivering them to a client within the state is subject to Iowa sales tax.

Iowa Code § 423.2(1) states:

There is imposed a tax of six percent upon the sales price of all sales of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users except as otherwise provided in this subchapter.

A retail sale “means any sale, lease, or rental for any purpose other than resale, sublease, or subrent.” Iowa Code § 423.1(46). Tangible personal property “means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses.” Timber mats are such tangible personal property and thus their rental is taxable.

A rental of tangible personal property is taxable in Iowa if it can be sourced within the state. Iowa Code § 423.15 provides:

1. Sales, excluding leases or rentals, of products shall be sourced as follows:
 - a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
 - b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser’s donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.
 - ...
2. The lease or rental of tangible personal property, other than property identified in subsection 3 or section 423.16, shall be sourced as follows:
 - a. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection 1. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.
 - b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.
 - c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

For these reasons, if [REDACTED] delivers timber mats to a client within the state of Iowa, the transaction is sourced to Iowa and will be subject to Iowa sales tax.

2) If we unload the mats onto the ground, the customer uses them to create an access road and we charge the customer a rental charge per day they have possession of the mats, which parts of this situation are taxable and to whom?

As stated in Response 1, a rental of timber mats to a client within Iowa is subject to sales tax. All such payments are taxable to the client and those taxes are to be collected by [REDACTED]. Iowa Code §

423.14(1)(a). However, if the tax is not paid, the Department may hold both parties liable for the outstanding tax. Iowa Code § 423.33.

Iowa Code § 423.29(1) states that “every seller who is a retailer and who is making taxable sales of tangible personal property in Iowa shall, at the time of selling the property, collect the sales tax.” Thus, [REDACTED] is required to collect tax when it charges a client, whether that be an upfront charge, a series of periodic payments, or a single bill at the end of the rental period.

3) If we truck the mats to the location, unload them and create the access road and then charge the customer the daily rental charge, who, if anyone is responsible for sales tax?

The rental of timber mats is taxable in the same manner as stated in Response 1. The service of creating the access mat roads may or may not be taxable, depending on what is involved. It is not clear from your email how the mat roads are created, however the service is taxable if it is excavating or grading.

Iowa Code § 423.2(5) imposes a six percent sales tax on the sales price of certain services enumerated in Iowa Code § 423.2(6), including “excavating and grading.” Iowa Admin. Code r. 701—26.19(422), describes this activity in more detail:

“[E]xcavation” shall mean the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. The word excavate ordinarily comprehends not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface. *Rochez Brothers v. Duricka*, 374 Pa. 262, 97 A.2d 825 (1953).

...

“Grading” shall mean, in its commonly accepted sense, a physical change of the earth’s structure by scraping and filling in the surface to reduce it to a common level; the reducing of the surface of the earth to a given line fixed as the grade, involving excavating or filling or both.

Your email does not provide enough details for the Department to make a determination on the taxability of creating mat roads. However, if the activity constitutes “excavating or grading” or any other taxable service, it will be taxed.

4) If we restore the right of way to its original state (earthwork, seeding, etc.) after the pipeline work is done, is that service taxable?

As with your previous question, your email does not provide enough information for the Department to make a determination on the taxability of restoring the right of way to its original state. Depending on where the work is done and what specific actions are involved, earthwork and seeding may constitute either “lawn care,” “landscaping,” or the aforementioned “excavating and grading,” all of which are enumerated taxable services under Iowa Code § 423.2(6).

Iowa Admin. Code r. 701—26.61(422) states:

“Lawn care” includes but is not limited to the following services: mowing, trimming, watering, fertilizing, reseeding, resodding, and killing of insects, moles, other vermin,

weeds, or fungi which may be threatening a lawn. Persons who mow lawns are providing a taxable service regardless of their ages.

...

The term “lawn” is commonly defined as an “open space between woods or ground (as around a house or in a garden or park) that is covered with grass and is generally kept mowed” or required to be kept mowed. (Webster’s New Collegiate Dictionary (1979).) Based on this general definition of “lawn,” the following are nonexclusive examples of properties which would be subject to tax as “lawn care:” cemetery grounds, golf courses, parks, and residential or commercial properties containing one or more buildings or structures. The mowing of grass within a ditch is not the taxable service of lawn care.

Iowa Admin. Code r. 701—26.62(422) similarly describes what constitutes the taxable enumerated service of “landscaping:”

The services performed by one who arranges and modifies the natural condition of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment is engaged in the business of “landscaping.” Any services for which registration is required as a “landscape architect” under Iowa Code section 544B.2 are not subject to tax on the service of “landscaping” if performed by a registered landscape architect and separately stated and separately billed on a charge for landscape architecture. The gross receipts from landscaping performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure shall not be subject to tax. See rule 701—19.13(422,423).

“Excavating and grading,” discussed at length in Response 4, may also apply. If restoring the right of way to its original state involves any of these three services, or any other service enumerated in Iowa Code § 423.2(6), it will be taxed.

5) If we purchase or rent a piece of equipment and then re-rent that equipment as a short term rental to our customer, what parts of this situation are taxable?

As stated in Response 1, Iowa Code § 423.2(1) imposes a six percent sales tax on the sales price of all tangible personal property in Iowa. This would include any piece of equipment purchased unless the equipment qualifies for a specific exemption under Iowa Code § 423.3. Tax exemption statutes are strictly construed with all doubts resolved in favor of taxation. *Iowa Ag. Constr. Co. v. Iowa State Bd. of Tax Review*, 723. N.W. 2d 167, 174 (Iowa 2006). The party claiming an exemption bears the burden of proving entitlement to the exemption. *Id.*

Iowa Code § 423.3(2) exempts from sales tax:

The sales price of sales for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with the furnishing of taxable services except for sales, other than leases or rentals, which are sales of machinery, equipment, attachments, and replacement parts specifically enumerated in subsection 37 and used in the manner described in subsection 37 or the purchase of tangible personal property, the leasing or rental of which is exempted from tax by subsection 49.

If [REDACTED] purchases or rents the equipment in order to re-rent it to customers, the initial rental or purchase could be exempt from tax. The subsequent rental to customers would be taxed for the reasons stated in Response 1.

6) Is the purchase of aggregate taxable?

As aggregate is tangible personal property, the purchase of it is taxable for the reasons stated in Response 1. It is possible that the purchase of aggregate may qualify for one or more exemptions under Iowa Code § 423.3, however there is not enough information in your email for the Department to make such a determination.

I hope this information has been helpful to you. Please remember that this letter is an informal opinion based only on the facts you provided and on the current law. In the future, the Department could take a position contrary to that stated in this letter. Any written advice or opinion rendered to members of the public by Department personnel that is not pursuant to a Petition for Declaratory Order under 701 IAC 7.24 is not binding upon the Department. If you have any additional questions regarding this matter please do not hesitate to contact me.

Sincerely,

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