REQUEST LETTER

04-021

NAME
ADDRESS

Dear Sir,

We need a written determination of the taxability of a transaction that we regularly conduct with several of our vendors. We have retail locations in multiple states. Often, when we need a "one time" repair or maintenance job done at one of our retail locations, we hire a company to contact a repair or maintenance company and initiate the work. This company is only in the business of coordinating the work. They do not actually do any of the work. There is a large variety of repair and maintenance work that is taken care of this way. It includes a HVAC repair, plumbing, parking lot maintenance, and other work our facilities department might otherwise handle. We do not have contracts with any of these vendors but we do have agreements with many as to what their fees will be.

The transaction process is as follows:

> We contact the vendor. The vendor hires a local company to go out to the retail location and do the necessary work. The local company bills the vendor. Please note that the local company often charges our vendor sales tax. The vendor in turn sends us a bill separately itemizing the amount charged by the local company and the their fee.

The vendor's fee is listed as a "management fee," overhead and profit," or a set "mark-up." It is usually either a flat fee or a flat percentage of the amount billed by the local company for the work. We need to know whether or not the vendor's fee is subject to sales and use tax. Also, are we liable for any sales or use tax on the portion of the bill attributable to the local company's repair work? If so, can we take a credit for any tax paid by our vendor to the local company?

I have included copies of some past invoices to illustrate how these companies typically invoice us. I have verified that these companies are in business strictly to coordinate the repairs. They have no hands on involvement. Thank you in advance for your assistance with this matter.

Sincerely,

NAME
ADDRESS

RESPONSE LETTER

December 12, 2005

NAME
ADDRESS

RE: Private Letter Ruling Request – Taxation of Repair and Maintenance Work

Dear NAME,

We have received NAME request for a written determination concerning COMPANY transactions concerning repair and maintenance services. Although NAME letter indicated that COMPANY does not have a written contract, she stated that it has an agreement with a company identified as the "vendor" to "co-ordinate" repair and maintenance services. The vendor hires a sub-contractor to actually perform the repair or maintenance service. Included was a set of invoices showing that the sub-contractor bills the vendor, not COMPANY, for the repair or maintenance service it performs at a COMPANY store. The vendor then bills COMPANY with an invoice for a transaction to "furnish all labor and materials to complete the following [repair job.]" On the invoice are two itemized charges: 1) the total amount of the sub-contractor's service tickets; and 2) a flat fee equal to 18% of the sub-contractor's total charges.

You have recently offered additional information by telephone that has been helpful to the Commission in making its determination. You mention that COMPANY rarely, if ever, sees the invoices that the sub-contractor sends to the vendor. In addition, COMPANY would not be responsible to pay the sub-contractor should the vendor not make payment to the sub-contractor. Finally, if the repair were improperly performed, you would expect the vendor to correct the problem, not the sub-contractor.

Under the circumstances described and as evidenced by the set of invoices submitted, the sub-contractor bills the vendor, not COMPANY, for the services it has performed. The vendor bills COMPANY an amount equal to the sub-contractor's repair charges plus a fee that is dependent on the amount of the repair charges. Critical to the Commission's decision is the fact the vendor is not in the business of making the repairs involved, but is instead in the business of locating sub-contractors to make the repairs. Under these circumstances, the Commission finds that there have been two transactions involving the repair service itself. First, the sub-contractor sells the repair service to the vendor. Second, the vendor sells the repair service to COMPANY. If the repair service is the type that is subject to taxation, the sub-contractor would receive an exemption certificate from the vendor and sell the service to the vendor tax-free under the resale exemption, as per Commission policy concerning that exemption. Then, the vendor would charge sales tax upon its resale of the repair service to COMPANY.

Furthermore, the Commission considers the transaction between the vendor and COMPANY to consist of two separate objects of the transaction, one being the repair service and the other being the nontaxable 18% "co-ordination" or administration service. Accordingly, when the vendor bills COMPANY for a taxable repair service, it should charge tax on any resale

of a taxable repair service (which in this case is the same amount that the sub-contractor charges the vendor). However, the vendor should not charge tax on the 18% co-ordination fee that is associated with the resale of the repair service.

The information we have received and assumptions we have made, as described above, are assumed to be factual. Should we find otherwise, we might consider the 18% co-ordination fee to be part of the taxable repair service and, accordingly, taxable as well. Should you need a written answer to other general questions, please feel free to contact Taxpayer Services Division at (801) 297-2200 or Auditing Division at (801) 297-4600 for guidance.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/KC
04-021