

Letter Rulings - LR 8167

Home (/) » rulings (/rulings/search) » LR 8167

LR 8167

Burial Vaults and Casket Rentals Subject to Sales Tax

October 29, 2021

Dear Applicant:

This is a letter ruling issued by the Director of Revenue under Section 536.021.10, RSMo., and Missouri Code of State Regulations 12 CSR 10-1.020, in response to your letter dated August 25, 2021.

The facts as presented in your letter ruling request are summarized as follows:

Applicant is a funeral chapel that provides burial and funeral services to customers. As part of its business operations, Applicant rents and sells various items of tangible personal property including burial vaults and caskets as follows:

Applicant sells burial containers/vaults ("Vaults") to customers. Vaults are purchased from the local vault manufacturer. Then, the Vault is delivered to the cemetery for use by the customer on the day of the funeral. After the committal, the casket is lowered into the Vault, and then the vault is lowered into the grave. Once the vault is lowered into the ground, the Vault is covered with dirt.

Applicant sells caskets and sometimes provides discounts to families without life insurance.

Applicant rents caskets to families who desire to have a funeral for their loved one prior to cremating them. Applicant purchases the rental casket from a casket wholesaler. These rental caskets have inserts which are used with the rental caskets and later cremated.

ISSUE 1:

Are sales of the vaults subject to sales tax?

RESPONSE 1:

Yes. Sales of the vaults to Applicant are subject to sales tax. Applicant should pay sales tax directly to the Vault manufacturer.

Section 144.020.1, RSMo., provides that "[a] tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state." Section 144.010.1(13), RSMo., defines "Sale at Retail" as "any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration."

Applicant purchases a Vault from the Vault company, who is engaged in the business of selling Vaults. Therefore, the sale of a Vault to Applicant is a sale at retail and the purchase of the Vault subject to Missouri state and local sales tax.

However, at the time of sale from Applicant to customer, the Vault is considered a fixture, not tangible personal property and, therefore, is not subject to sales tax. "Personal property may be so annexed to real estate that it is part of the land, a 'fixture.'" *Buchholz Mortuaries, Inc. v. Director of Revenue*, 113 S.W.3d 192, 193 (Mo. banc 2003). A fixture "is shown by (1) annexation to the land; (2) adaptation to the location; and (3) intent of the annexor at the time of annexation." *Id.* Applicant takes the purchased Vault and inserts it into the customer's grave and covers it with dirt after insertion. Thus, the Vault is adapted to the land and it is the intent of Applicant to annex the Vault to the land by lowering the Vault in the grave after the casket has been inserted in the Vault. Therefore, a Vault is considered a fixture.

Moreover, in this instance, Applicant serves as a Contractor to the consumer, *not* a seller at retail. Missouri Code of State Regulations 12 CSR 10-112.010(2)(A) defines "Contractor" as "[a]ny person entering into an agreement to improve, repair, replace, erect or alter real property." In this scenario, Applicant is a contractor who enters into an agreement with its customer to purchase the Vault and lower the Vault into the grave once the customer's casket has been placed in the Vault. A Vault is a fixture that adapts to the land and the Applicant's intent is to adapt the Vault to the cemetery once the casket has been placed inside it. Therefore, because Applicant is hired by its customer to purchase the Vault and lower it into the grave, Applicant is a contractor.

Missouri Code of State Regulations 12 CSR 10-112.010(1) provides:

In general, a contractor is the final user and consumer of the materials and supplies used and consumed in fulfilling a construction contract and which become part of a completed real property improvement. Consequently, persons selling materials and supplies to a contractor are subject to tax on the gross receipts from all such sales because the purchase is not for resale as tangible personal property.

Applicant enters into an agreement with its customer to purchase a Vault that Applicant will lower into a grave once the casket has been inserted into it and then cover it with dirt. Vaults alter real property and adapt to real property. At the time of the Vault purchase, Applicant's intent is to adapt the Vault to the cemetery. Therefore the Vaults Applicant purchases are fixtures. As the Vault is a fixture, Applicant is the end user of the Vault. Therefore, the Vault transaction between Applicant and customer is not subject to sales tax. However, Applicant is required to pay any Missouri state and local sales tax owed on the purchase of the Vault from Applicant's Vault supplier.

ISSUE 2:

Are rental caskets and casket inserts subject to sales tax?

RESPONSE 2:

Applicant may choose whether to pay sales tax on its purchase of the casket or charge sales tax on casket rentals. However, Applicant should charge and remit sales tax for the purchase of the casket inserts.

12 CSR 10-108.700(1) provides "[i]n general, payments for the lease of tangible personal property are subject to tax unless the lessor paid tax on the purchase of the property."

In relevant part, 12 CSR 10-108.700(2)(A) defines a lease as "any transfer of the right to possess or use tangible personal property for a term in exchange for consideration."

Applicant grants customers the right to use the rental casket during the funeral process in exchange for consideration. Therefore, the casket rentals are considered leases for the purpose of Chapter 144. Applicant may choose whether to forego paying sales tax at the time of purchase and remit sales tax on rental payments or to pay sales tax at the time of purchase and remit no sales tax on rental payments.

On the other hand - the casket insert is sold, not leased. The casket insert is destroyed during the cremation process. Therefore, unlike the casket rental, the transfer of rights over the casket inserts from Applicant to customer is necessarily permanent. Sales tax must be paid on the customer's purchase of the casket insert. However, Applicant may claim a resale exemption on its purchase of the casket inserts from the manufacturer. See 12 CSR 10-107.100.

If Applicant chooses to pay sales tax on the rental casket at the time of purchase instead of charging sales tax to its customers, Applicant should clearly and separately state charges for the taxable purchase of the casket insert and the non-taxable casket rental.

ISSUE 3:

How should sales tax be calculated for the purchase of discounted caskets?

RESPONSE 3:

Sales tax should be charged on the discounted price of the discounted casket.

In relevant part, section 144.020, RSMo provides "a tax is hereby levied and imposed . . . upon all sellers for the privilege of engaging in the business of selling tangible personal property . . . at retail in this state. The rate of tax shall be . . . [u]pon every retail sale in this state of tangible personal property . . . a tax equivalent to four percent of the *purchase price paid or charged*."

(Emphasis added).

Here, the discounted purchase price paid by the customer is subject to tax. See *also* 12 CSR 10-103.555(4)(B) (Grocer applying discount to goods should pay sales tax only on the amount charged to customer). Applicant should ensure that the purchase contract clearly reflects the discount applied to the casket purchase and the amount paid for the casket.

This letter ruling is binding upon the Department of Revenue with respect to the Applicant for three (3) years from the date of this letter and is subject only to statutory changes by the General Assembly and to changes in the interpretation of law by the courts or administrative tribunals. If a change occurs, the taxpayer who relies upon an outdated interpretation may be subject to additional taxes, interest and penalties, which may be imposed prospectively from the date of the change. For this reason, the interpretation set forth above should be reviewed on a regular basis. Please note that any change in or deviation from the facts as presented will render this ruling inapplicable.

Should additional information be needed, please contact Legal Counsel Stephen S. Krogmeier. General Counsel's Office, Post Office Box 475, Jefferson City, Missouri 65105-0475 (phone 573-751-0961), or me.

With due care,

Joseph G. Plaggenberg