

 Rhode Island Department of Revenue
Division of Taxation

August 20, 2019

Via e-mail only to enouri@paint.org

Eric R. Nouri
Senior Corporate Counsel
PaintCare
901 New York Ave NW, Suite 300 West
Washington, DC 20001

Re: Declaratory Ruling Requested June 7, 2019

Dear Mr. Nouri:

This letter is in response to a request for a declaratory ruling (“Ruling Request”) sought by your client, PaintCare (“Company”), regarding the application of sales tax to a statutory paint stewardship assessment included in the purchase price of architectural paint sold at retail in Rhode Island.

Facts

The facts set forth below are taken from the statement of facts you presented by e-mail on May 2, 2019 and were incorporated into the Ruling Request dated June 7, 2019.

The Company is a non-profit 501(c)(3) organization that was created by a membership-based trade association of the paint manufacturing industry. The Company established a limited liability company to serve as the stewardship entity responsible for the Company’s program in Rhode Island. The Company represents paint manufacturers in planning and operating paint stewardship programs in those jurisdictions that pass paint stewardship laws. The Company’s program covers downstream transportation and disposal costs of leftover paint, which is funded by a paint stewardship assessment (“Assessment”). Retailers must apply the Assessment to each container of architectural paint sold in those jurisdictions with paint stewardship laws. Rhode Island has a paint stewardship program established by statute (R.I. Gen. Laws § 23-24.12-2).

The Company encourages retailers to identify the Assessment separately on purchase receipts, but retailers may opt to include the fee as part of the listed retail price of program-eligible products. The current Assessment amounts in Rhode Island are based on container size as follows:

\$ 0.00	Half pint or smaller
\$ 0.35	Larger than half pint up to smaller than 1 gallon
\$ 0.75	1 gallon

\$ 1.60 Larger than 1 gallon up to 5 gallons

According to the Company, the Assessment is part of the final purchase amount that the customer is charged when purchasing architectural paint.

Ruling Requested

The statutory paint stewardship assessment is subject to Rhode Island sales tax as it is included in the total sales price of the paint sold at retail.

Pertinent Local Statutory and Regulatory Law

R.I. Gen. Laws § 44-18-18 imposes a tax on all sales at retail in the state of Rhode Island. Each retailer must add the tax to the sale price or charge of the taxable item(s). R.I. Gen. Laws § 44-18-19. The measure subject to the sales tax is the “sale price”, which 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...” R.I. Gen. Laws § 44-18-12(a)(iii). (Emphasis added.) All gross receipts are presumed to be taxable unless proven otherwise to the Tax Administrator. R.I. Gen. Laws § 44-18-25.

R.I. Gen. Laws § 23-24.12-1 *et seq.* was enacted to properly manage unused paint in a safe, environmentally sound manner. Specifically, the goal of the program is to establish a statewide system for collecting, recycling, and reusing post-consumer paint, provide fiscal and regulatory consistency for all paint producers that participate in the program’s collection system, and set up education programs for collecting unused paint under the program. R.I. Gen. Laws § 23-24.12-1. The paint stewardship assessment must be added to the purchase price of all architectural paint sold in Rhode Island. R.I. Gen. Laws § 23-24.12-3. The Assessment “shall be added to the cost of all architectural paint sold to retailers and distributors in this state by each producer...[and] each retailer or distributor, as applicable, shall add the amount of such paint stewardship assessment to the purchase price of all architectural paint sold in this state.” R.I. Gen. Laws § 23-24.12-3(g). The statute further requires that educational materials regarding the paint stewardship assessment and program be distributed at the point of sale to the consumer; such materials must include a notification “that a charge for the operation of such paint stewardship program is included in the purchase price of all architectural paint sold in [Rhode Island].” R.I. Gen. Laws § 23-24.12-3(l).

Discussion

The Assessment is included in the purchase price of each unit of architectural paint sold as set forth in the schedule provided by the Company. R.I. Gen. Laws § 23-24.12-3. The Assessment is thus a charge for a service that is necessary to complete the sale of architectural paint and is not a delivery or installation charge. As such, the Assessment is part of the sale price upon which Rhode Island sales tax is due. R.I. Gen. Laws § 44-18-12(a)(iii).

Ruling

The statutory paint stewardship assessment is subject to Rhode Island sales tax as it is included in the total sale price of the paint sold at retail.

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

Sincerely,



Neena S. Savage
Tax Administrator