

MARKS & WEINBERG, P.C.

LZM, Inc. v. Va. Dep't. of Taxation 606 S.E.2d 797 (Va. 2005)

LZM is in the business of leasing portable toilets and offering a pumping service to customers who lease LZM toilets. The pumping service appears as a separate charge on LZM invoices. The Virginia Dept. of Taxation found that LZM neglected to collect and remit sales tax for some period of time for the amounts charged for pumping services. LZM contends that the pumping is a distinct service and therefore not subject to the tax.

The lower court applied the true object test to determine the dominant purpose of the mixed sale and service transaction and found against LZM. LZM argues that the true object test is only to be applied to true sales, not leases or rentals as in this situation. The Supreme Court looked to another portion of Virginia code which defines "sale" to include "lease or rental" and found that the true object test was appropriately applied to this case.

LZM alternatively argued that even if the test is applied, the pumping services should be found to be a distinct from the sale since customers who lease toilets do not have to employ the pumping service. The Supreme Court did not agree with this argument, determining that the pumping services provided by LZM produce the true object of the transaction, a functioning portable toilet. Without the pumping services, the customer would have nothing of value. The record showed that LZM did not provide this pumping service to anyone who had not leased the toilet from LZM. In addition, LZM charges for



the pumping service based on the number of toilets leased, not the amount of waste pumped. The Court affirmed the decision that the true objects test can be applied to a lease and that, in this instance, the services provided were essential to the true object of the transaction, and thus not distinct from the sale and taxable.

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