

Ruling 2004-02

Vermont Department of Taxes

Dated: March 10, 2004

Written By: John Bagwell, Attorney for the Department

Approved By: Tom Pelham, Commissioner of Taxes

You have, on behalf of your client, <Company> (the "Taxpayer"), asked the Vermont Department of Taxes to issue a formal ruling addressing Vermont sales and use tax questions pertaining to the facts presented in your letter dated July 25, 2003. The Taxpayer is in the business of providing health and medical record processing services, and the issues to be addressed concern transactions that occur in the conduct of that business.

PRESENTED FACTS

The Taxpayer provides health and medical record processing services to attorneys, insurance companies, governmental entities, patients, physicians, hospitals, and other requesting parties ("Customers"). The Taxpayer's services are performed by the Taxpayer's employees, who utilize equipment such as laptop computers and scanners that are provided by the Taxpayer. These services are performed at hospitals, physicians' offices, or the employees' home offices located in Vermont.

Upon the Taxpayer's receipt of a Customer's request for a copy of a patient's health and medical records, the employee will visit the hospital, physician's office, or similar location where the particular information is located. Upon arriving at the hospital, physician's office, or similar location, the employee may facilitate the Customer's request by one of two methods:

Method One:

The employee utilizes a laptop computer, scanner, or other similar electronic medium to electronically scan and save the requested health and medical record information. Upon securing the scanned information, the employee electronically transmits it to the Taxpayer's facility in <Area>. When the information is received at the Taxpayer's <Area> facility, the information is processed and, depending on the Customer's election, either an electronic version of the information is transmitted to the Customer or a hardcopy version is printed and mailed to the Customer.

Method Two:

The Taxpayer's employee visits the hospital, physician's office, or other location where the health and medical record information is located and physically photocopies the requested information. Upon the requested information being photocopied, the employee subsequently mails the requested information to the Customer from the hospital, physician's office, or other location where the information is located.

Invoice Components:

Upon providing any of the services described above, the Taxpayer invoices the Customer a separately stated charge for the requested service. The various possible components of a typical transaction and an explanation of each component are described as follows:

- * *Basic/Retrieval Fee*: A separately stated flat fee charged for locating the records.
- * *Quickview Delivery Fee*: A separately stated fee to electronically access and view the contents of the delivered information via the internet.
- * *Per Page Fee*: A separately stated fee for each page of the record that is either scanned or photocopied.
- * *Postage Fee*: A separately stated fee for the postage associated with mailing a hardcopy of the record. This fee does not contain a markup for profit.
- * *Handling Fee*: A separately stated charge, distinct from the charge for postage, associated with mailing a hardcopy of the record.
- * *E-Disclosure Fee*: A separately stated fee to track and confirm the status of the information being delivered.
- * *Certification Fee*: A separately stated fee to certify the information.
- * *Notarization Fee*: A separately stated fee to notarize the information.
- * *Deposition Fee*: A separately stated fee to affirm that the information is suitable to be utilized in a legal deposition.
- * *Docustore Fee*: A separately stated fee to electronically store the information.

ISSUES SUBMITTED FOR RULING

Issue One: Are the fees described above subject to Vermont sales and use tax?

Issue Two: Are the scanners, laptop computers, and similar electronic media utilized in Method One and Method Two deemed to be processing equipment so as to be exempt from Vermont sales and use tax when purchased?

Vermont exempts from sales and use tax those transactions involving the sale and purchase of property for resale. 32 V.S.A. § 9701(5). This ruling assumes that this exemption will not be applicable and that all sales will accordingly be at retail. It also assumes that the Customers are not entities that are exempt from Vermont sales and use tax.

DISCUSSION AND RULINGS

Issue One

As specifically noted in the following discussion, some fees will be subject to Vermont sales and use tax and some will not. A fee's taxability is governed by the facts and by the application of the Vermont sales and use tax law to those facts.

Vermont imposes a 6% sales tax on receipts from the sale of tangible personal property sold at retail in Vermont. 32 V.S.A. § 9771(1). It also imposes a compensating use tax of 6% for the use within Vermont of any tangible personal property purchased at retail. 32 V.S.A. § 9773(1).

Tangible personal property, by statutory definition, includes personal property that can be seen, weighed, measured, felt, touched or in any other manner perceived by the senses. 32 V.S.A. § 9701(7). The sale and purchase referred to in Sections 9771(1) and 9773(1) includes the transfer of title or possession by any means. 32 V.S.A. § 9701(6).

The definition of "receipts" on which sales tax is imposed under Section 9771(1) includes, in pertinent part, the gross sale price of any property. 32 V.S.A. § 9701(4). The definition excludes separately stated costs of transporting the property from the retailer's place of business or other shipment point directly to the purchaser, as long as shipment is by common carrier, contract carrier, or the United States mail. *Id.*

The use tax imposed under Section 9773(1) is generally calculated with reference to the consideration given or contracted to be given for the property. 32 V.S.A. § 9774(c). The adjustments that apply to the calculation of receipts for sales tax purposes, including the adjustment for transportation costs, also apply in calculating the consideration given for use tax purposes. *Id.*

Certain exemptions for sales and use tax purposes are allowed under 32 V.S.A. § 9741. This Section states that "[r]eceipts [under the statute's subsections] shall be exempt from the tax on retail sales imposed under section 9771. . . and the use tax imposed under section 9773. . . ."

Section 9741(35) exempts charges made when tangible personal property is transferred as part of a personal services transaction or as part of a transfer of intangible property, as long as the following conditions are met: (1) The focus of the transaction is on the provision of services or the transfer of intangible property rights; (2) No separate charges are made for the transfer of the tangible personal property, and; (3) The value of the transferred tangible personal property, including the value of services added to that property, is less than 10 percent of the total charges for the transaction.

Section 9741(35) further provides that charges for services or intangible property rights are taxable, even if separately stated, when the focus of the transaction is the transfer of tangible personal property. In such cases, all receipts from the sale are taxable, including receipts from separately stated charges for services to produce the property, unless the receipts are otherwise exempt.

Based upon the facts described in your letter and the application of the Vermont sales and use tax statutes to those facts, the Taxpayer's fees are subject to Vermont sales and use tax to the following extent:

* *Basic/Retrieval Fee*. This a service charge that is subject to Vermont sales and use tax in those cases where the reports are transmitted on printed or photocopied paper pursuant to Method One or Method Two. These reports, being on paper, are tangible personal property. The transactions pursuant to which these reports are transmitted focus on the transfer of tangible personal property, and the services for which the fee is charged are required to produce the reports. Under these circumstances, the fee is subject to Vermont sales and use tax under Section 9741(35). It is accordingly a taxable receipt for sales tax purposes under Section 9771(1) and taxable consideration for use tax purposes under Sections 9773(1) and 9774(c).

The fee is not subject to Vermont sales and use tax in cases where the report is delivered by electronic transmission under Method One. The electronic report is not tangible personal property and the given facts indicate that no tangible personal property is transferred as part of the same transaction. Vermont does not specifically tax charges for services such as those covered by the Basic/Retrieval fee, and the special rules under Section 9741(35) governing the taxation of service charges are not applicable in the absence of a transfer of tangible personal property.

* *Quickview Delivery Fee*. This fee is a charge to access and view a site on the internet, and Vermont does not tax such charges. The fee is also not taxable as a service charge under Section 9741(35) in the absence of a transfer of tangible personal property.

* *Per Page Fee*. This fee is essentially a charge for the report. In cases where the reports are transmitted on paper under Methods One or Two, the fee constitutes a taxable receipt for the sale of tangible personal property under Section 9771(1) and taxable consideration for use tax purposes under Sections 9773(1) and 9774(c).

The fee is not subject to Vermont sales and use tax in cases where the report is transmitted electronically under Method One. It is, under these circumstances, a charge for intangible personal property and is not subject to sales and use tax under Sections 9771(1), 9773(3), or any other Vermont sales and use tax statute.

* *Postage Fee*. This fee is a transportation charge that is conditionally excluded from sales and use tax under Section 9701(4). It will not be subject to Vermont sales or use tax if the following requirements are met: (1) The reports must be transported directly to the Customer from the Taxpayer's place of business or other point from which shipment is made; (2) The postage charge must be separately stated on the invoice; and (3) The reports must be transmitted by common carrier, contract carrier, or the United States mails. The fee is subject to tax if any of these requirements are not met.

* *Handling Fee*. This fee is a taxable receipt subject to sales tax under Sections 9771(1). It also constitutes consideration subject to use tax under Sections 9773(1) and 9774(c). Unlike the Postage Fee, this fee does not qualify as a transportation charge under Section 9701(4).

* *E-Disclosure Fee*. This fee is a service charge that is not subject to sales and use tax. Vermont does not specifically tax charges such as those covered by this fee. The fee is also not taxable as a service charge under Section 9741(35) in the absence of a related transfer of tangible personal property.

* *Certification Fee*. This is a service charge that is subject to Vermont sales and use tax in those cases where the reports are provided on paper pursuant to Methods One or Two. These reports are provided to Customers pursuant to transactions that focus on the transfer of tangible personal property, and the certification services for which the fee is charged are a necessary part of the report production process. Under these circumstances, the fee is subject to Vermont sales and use tax under Section 9741(35). It is, accordingly, a taxable receipt for sales tax purposes under Section 9771(1) and taxable consideration for use tax purposes under Sections 9773(1) and 9774(c).

The fee is not subject to Vermont sales and use tax in cases where the reports are transmitted electronically under Method One. The electronic reports are not tangible personal property and no tangible personal property is transferred as part of the transfer transaction. Vermont does not specifically tax charges for certification services, and the special rules governing the taxation of service charges under Section 9741(35) do not apply in the absence of a transfer of tangible personal property.

* *Notarization Fee*. This is a service charge that is subject to Vermont sales and use tax in those cases where the reports are provided on paper pursuant to Methods One or Two. These reports are provided to Customers pursuant to transactions that focus on the transfer of tangible personal property, and the notarization service for which the fee is charged is a necessary step in producing a final report. Under these circumstances, the fee is subject to Vermont sales and use tax under Section 9741(35). It is,

accordingly, a taxable receipt for sales tax purposes under Section 9771(1) and taxable consideration for use tax purposes under Sections 9773(1) and 9774(c).

This fee is not subject to Vermont sales and use tax in cases where the reports are transmitted electronically under Method One. The electronic reports are not tangible personal property and no tangible personal property is transferred as part of the transfer transaction. Vermont does not specifically tax charges for notarization services, and the special rules governing the taxation of service charges under Section 9741(35) do not apply in the absence of a transfer of tangible personal property.

* *Deposition Fee*. This is a service charge that is subject to Vermont sales and use tax in those cases where the reports are provided on paper pursuant to Methods One or Two. These reports are provided to Customers pursuant to transactions that focus on the transfer of tangible personal property, and the deposition services are required to produce a report that serves its intended purpose. Under these circumstances, the fee is subject to Vermont sales and use tax under Section 9741(35). It is, accordingly, a taxable receipt for sales tax purposes under Section 9771(1) and taxable consideration for use tax purposes under Sections 9773(1) and 9774(c).

The fee is not subject to Vermont sales and use tax in cases where the reports are transmitted electronically under Method One. The electronic reports are not tangible personal property and no tangible personal property is transferred as part of the transfer transaction. Vermont does not specifically tax charges for services such as those covered by the Deposition Fee, and the special rules governing the taxation of service charges under Section 9741(35) do not apply in the absence of a transfer of tangible personal property.

* *Docustore Fee*. This fee is not subject to Vermont sales and use tax. Vermont does not specifically tax charges for the electronic storage of information. The fee is, furthermore, not taxable under the special rules governing the taxation of service charges under Section 9741(35) in the absence of a transfer of tangible personal property.

Issue Two

The scanners, laptop computers, and similar electronic media used under Methods One and Two are not, under the presented facts, exempt from Vermont sales and use tax when purchased. The manufacturing exemption under 32 V.S.A. § 9741(14) could, under certain circumstances, provide an exemption were it not for the fact that the equipment is used to produce intangible as well as tangible property.

Section 9741(14) provides that in order to qualify for the exemption, the equipment must be used "directly and exclusively, except for isolated or occasional uses, in the manufacture of tangible personal property for sale. . . ." The statute goes on to say that "it shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery or equipment is operated."

The given facts show that the equipment is used to produce electronically-transmitted reports, which constitute intangible property. The facts also indicate that the equipment is used more than incidentally or occasionally in producing such property. The equipment is therefore ineligible for the manufacturing exemption and, in the absence of any other exemption, is subject to Vermont sales and use tax at the time of purchase.

STATUTES ENACTED BUT NOT YET IN EFFECT

Vermont has recently enacted sales and use tax statutes that will take effect on the first day of the second quarter following the date of Vermont's membership in the multistate streamlined sales and use tax agreement, but no earlier than January 1, 2005. These statutes, when they become effective, will render this ruling's conclusions obsolete to some extent. They would, for example, include the Postage Fee in taxable receipts without exception. This ruling is, however, limited to the presented facts as affected by statutes currently in effect. The recently-enacted statutes and their application are accordingly not within the scope of this ruling.

GENERAL PROVISIONS

This ruling will be made public after deletion of the parties' names and any information that may identify the parties. A copy of the ruling showing the proposed deletions is attached, and you may request, within 30 days, that the Commissioner delete any further information that might tend to identify interested parties. The final discretion as to deletions, however, remains with the Commissioner.

This ruling is issued solely to you and is limited to the facts presented, as affected by statutes and regulations in effect on the date of this ruling. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in case of any change in the relevant statutes and regulations.

3 V.S.A. § 808 provides that this ruling will have the status of an agency decision or order in a contested case. You have the right to appeal this ruling within thirty (30) days.